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# HEARING OF NOVEMBER 1, 1943.

3715

## PROCEEDINGS RESUMED.

Chairman Myers: Well, if we are ready, we will go ahead, gentlemen.

Mr. Bromley: Yes, Mr. Chairman. Call Mr. Gingrich.

ARNOLD GINGRICH, resumed the stand and testified further as follows:

*Direct Examination by Mr. Bromley (Continued):*

3716

Q. At the last session, Mr. Gingrich, you commented upon some of the contributors to the January and February issues of the magazine Esquire.

Will you now tell the Board about some of the other contributors who are found in the remaining complained of issues? A. Going through the issues I can comment as we reach various names but just recalling off-hand probably the most noteworthy contributors would be the man I think Mencken put at the top of our list, Theodore Dreiser (that is, in his opinion of the cited issues), Sir Norman Angell is one of the names we will encounter in going through the issues. Various well-known literary names as well.

3717

Some of the names are less well-known than others, but from where I sit I see the name Max Werner. He is an outstanding military authority; perhaps the best record of any of our military authorities in calling the turn on the shape of things to come from point to point in the present war. I believe he was almost alone at the time

*Arnold Gingrich—for Respondent—Resumed—Direct.*

3718

the Russo-German war began, in correctly forecasting what would happen at the time when the so-called military experts among the commentators were unanimous in saying the Russians could hardly be expected to last more than six weeks at the outside.

Of course, our department names; regular appearances by George Jean Nathan, and up until the September issue, William Lyon Phelps.

It is rather a memory test to give you any list of names without having the list to refer to, really.

Q. I want you to look at the table of contents. A. All right.

3719

Q. I want you to pick out just a few of the better known names. A. Well, Lieutenant J. K. Taussig, Jr. That is a very famous name in the Navy. He is a son of the Rear Admiral Taussig. A man whose name has meant a great deal in Navy annals. He himself was wounded at Pearl Harbor and spent a year in a hospital bed from which he wrote his story of his own experiences and those of his crew during the catastrophic 24 hours at Pearl Harbor.

Max Werner I have already mentioned, as is the case with Curt Reiss.

3720

Clyde Vandeburg was in the O. W. I. in Washington at the time he wrote his article in the March issue. That is tantamount to an official article as of that period because it contained information about the war effort as regards aviation, which was being embodied as of that moment in an official O. W. I. folder about our aviation.

Hauptman Hermann, the author of the "Rise and Fall of the Luftwaffe", frankly uses a pseudonym. His real name, while we know it, because we used it to pay the checks for the articles, has never been published or publicly used in this country because he broadcasts for the O. W. I. on the

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short-wave foreign language programs addressed to enemy territory, and was one of the insiders of the developing stages of the Luftwaffe. In other words, he was one of the key figures in the conversion of German civil aviation after the last war to the Luftwaffe during this war, during the so-called shadow stages or stage of German rearmament.

3721

The series, by the way, although written as of about September and October, 1942, and beginning publication January 15th with our February issue, very correctly called the turn on the coming phases of the battle in the air between the R. A. F. and the American Army air forces against the Luftwaffe, and while at the time that he wrote, none of the American planes had until that moment been over Germany proper—they had been over the French coast—he showed very clearly the inevitable future course of the battle for Germany in the air.

3722

Q. What about the author Gallico? A. Paul Gallico has had an interesting career. He was perhaps the best known of the sports reporters in the so-called era of wonderful nonsense in the '20's, all the glamorous big names of sports in that period, Babe Ruth and Jack Dempsey and so on throughout the million dollar gate period in America. It is a matter of record that he was the highest-priced sports writer that there ever was; and yet at that stage of his career when he was making a movie star salary, he threw it over to take a \$60 a week job as a reporter because he wanted to get away from sports and felt that sports in that particular phase of the '20's was going to go into something of an eclipse.

3723

So, he turned his back on that and went into a totally different direction and started a new career and I believe in 1936 he began to devote himself to free-lance writing, where again he made almost a third phase, and he has since

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3724 that time written books and magazine stories very successfully for a number of American magazines.

Q. I notice that Commander Attilio Gatti is a frequent contributor. Is he an outstanding writer? A. Commander Gatti is an outstanding figure in the field of scientific exploration and, perhaps today you could call him an outstanding writer in that he has written on his African explorations for many American magazines.

At the time he first contributed to our pages, however, he had never appeared in print outside of scientific journals, very restricted reports of scientific findings.

3725 But we first became interested in him through his photographs of African subjects which were obtained for publication in *Coronet*, and then in the course of discussing the background of all these pictures his own story began to seem so compelling that we encouraged him to put it into print, so you might in a sense say that he too is one of our discoveries. Some of the things he has done have had some of the widest circulation, and one of those things was serials for children based on his African experiences; they have run in the *Ladies Home Journal* and I think in *Good Housekeeping*.

3726 Q. I notice in the September issue there is an article entitled "Private Snailspace Wins The War", by Ed S. Woodhead. Is that the Woodhead that is referred to by the Army publication in the excerpts "Shor Nuff"? A. Yes; that is the same man.

Q. What is that article that he wrote about, "Private Snailspace Wins The War"? A. You might call that an indoctrination article for a young man about to enter the Army. This is like a sophomore's advice to a freshman. Woodhead, as I think I mentioned, is in the Army himself. He is a lieutenant, and he takes your inductee by the hand



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and tries to tell him the ropes, of what is going to be his best way to get on in life in the Army. It is frankly a primer for the rookie.

3727

Q. I notice in the October issue an article by Maurice Hindus. Have you mentioned him and, if not, who is he?

A. I have not. Maurice Hindus is a Russian who has been living in this country for a good many years. He writes for many of the New York papers, I believe for the New York Times. He has lectured widely and has written many books. He has made trips to Russia during the present war and has written very effectively since the beginning of the Russian campaign, serving as an interpreter of the Soviets to the average American citizen.

3728

Q. Who is Maxwell Bodenheim? A. I wanted to add, that since he is not a Communist himself, he had for a long time prior to the outbreak had what you would call anything but a fashionable pro-Soviet point of view. I think his opinion carried more weight in educating our citizens than anything with regard to the aims of the Russians than perhaps the average writer in that field.

Q. Who is Maxwell Bodenheim? A. He is one of the most colorful figures in our American literature. He was the partner of Ben Hecht in the period in Chicago in the '20's when they created a literary tempest in a tea-pot with the Chicago Literary Times. Hecht and Bodenheim went their separate ways after that period, and Hecht came to great riches and fame as the creator of Hollywood scenarios, but Bodenheim never did or perhaps did not want to make the same kind of conversion from the literary to the financial, so he has gone on as a poet, and he is a very fine one, and he is now as well-known, but the rewards of poetry are anything but sizeable, and Bodenheim has become a Greenwich Village character in New York who

3729

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3730

has simply never managed to capitalize his particular fame the way so many of the others have.

Eugene O'Neill was also in the very same circle of activity as Bodenheim back 25 or 30 years ago. O'Neill went on to make a fortune, but Bodenheim never has.

We have printed Bodenheim very frequently and I must say that on many occasions the purchase of a Bodenheim sonnet has been the means of providing Bodenheim with a month's sustenance.

3731

Q. Reference has been made by Mr. Hassell to the fact that in the August issue you used that "Take Thou" sign especially with reference to the article "Many Wives Too Many." Will you explain briefly how that sign came into use and describe it for us? A. Well, that sign is used exactly in the Take Thou connotation as a prescription sign is, being an indication that we consider it prescribed reading. That is what I consider prescribed reading in any given issue.

3732

I think the reference Mr. Hassell made is in the March editorial where there was an explanation of that sign, and I would like to look back at it. This is in the left-hand corner of page 6 of the March, 1943, issue: "We put our own little private slug on it, that little R symbol by which we have for the last couple of years designated those of our editorial dishes which the chef couldn't bear to think of your passing up."

In other words, knowing that a magazine containing as much in the way of editorial content as the average issue of Esquire does, might not be read from cover to cover by every last reader, we have for a long time marked certain things in each issue in each of the categories, represented as being at least the editor's best guess as to what would be popular in the issue.



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Now, the fact that I put my little symbol on a story or an article does not necessarily mean that I have thought it is the one of most literary value, that it is the best thing in the issue, but it does represent my best guess as to what will appeal to the greatest percentage of our readers in any given issue.

3733

For instance, here in the March issue I have indicated five things with the idea that I would hate to think of any reader missing any of those five out of anything else that they choose to read or not read in the issue.

The first one is the memorable story by Lieutenant Taussig of his crew at Pearl Harbor, which I considered one of the most amazing American documents I ever read. I had never seen anything in all my experience of reading of stories and war descriptive literature in anthologies and books except Stephen Crane's "Red Badge of Courage" that seemed to me to be as vivid an eye-witness account, and one that would as compellingly take the reader into the experience of actual warfare, as does this article by Taussig, and I not only gave my prescription sign to it, but devoted the page 6 editorial to an explanation of how we happened to get the piece and what I thought of it, and in an endeavor to persuade every last reader to read it.

3734

Incidentally, in that piece about getting the article there is a reference to the fact that Lieutenant Taussig himself, feeling that time was of the essence in the sale of any story of experiences at Pearl Harbor, because the Navy had lifted the ban on the Pearl Harbor episode, assumed that there would naturally be a period at which Pearl Harbor stories could be sold and they would very quickly lose their timelessness, so he sent this piece to three magazines simultaneously, and in his letter to me he said he hoped it would go into Esquire because he considered Esquire more of a man's

3735

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3736 magazine and one most likely to reach the men he wanted it to reach in his story; that is, men in the Navy, so our prescription sign in this instance is given to the article.

Our prescription sign in this instance, too, is given to the article by Max Werner, whom I mentioned before as an outstanding military authority, and that is the piece on "Germany's Magic Circle Strategy". It represents a diagnosis for the layman of the underlying formula of German military success as it was first designed and carried into effect for the German general staff by von Schlieffen, from way back, in the old days of the last war, and it shows how and why that particular ace card which had won the hand in every previous German campaign in this war was bound to be trumped by the Russians when they tried to apply the same strategy formula to the Russian campaign.

3737 Q. Do you use that sign particularly to point out articles that have nothing to do with sex? A. Well, looking over the page I see the rest of these that are marked, and there isn't any sex at all in any of them.

Q. Never mind the page. What is your policy about them? A. The policy is one of trying to high point the issue. I would try to do this. I would never use that sign on five stories and not touch on anything else in the issue. Here, for example, is one piece of fiction which is given the prescribed sign by an author, perhaps an author nobody ever heard of—B. A. Garside. That is certainly not a big name in the literary field, but this story, which is a story of the Chinese heroes in the present war who have gone underground after the enemy has overcome their provinces—is written by B. A. Garside. B. A. Garside is vice-president and executive director of United China Relief, and the story was written, as, let us call it, sugar-coated propaganda. He

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wrote it more on behalf of the United China Relief than for any personal aggrandizement as an author.

3739

The next one is by Sidney Carroll, who represents us on the West Coast, and has done personality articles for us for years, devoted to the present phase of the Walt Disney production, which has been turned over entirely to the war effort, and this is an informative and inspirational piece on the way the total mobilization has gone so far as to include Donald Duck.

Q. To summarize it, you don't use it with any special reference to sex, but, on the contrary, to point out articles that you think are worth while? A. Yes. I wouldn't go out of my way to avoid putting it on a piece with some sex, any more than I would go out of my way to avoid putting it on a piece with no sex.

3740

Q. Will you refer to the February issue of the story of "The Unsinkable Sailor" and tell me who the author of that piece was? A. H. B. Lawrenson stands for Helen Brown Lawrenson. We never have used a feminine by-line in Esquire.

Helen Brown Norden, who wrote for us in the past, is married to a man named Jack Lawrenson, who is the vice-president of the National Maritime Union. Through him she was introduced to Showboat Quinn, whom Lawrenson considered such a picturesque character and typifying for him the outstanding merchant marine heroes of this war, and one who he thought might very well pose as a model for what might be considered a recruiting poster for the Merchant Marine. He wanted to show that all the heroes in this war were not in uniform, and all the colorful characters and colorful exploits are not in the air force, which has become the glamour branch of this war, and by this informal portrait of an unsinkable sailor, inferentially glorify the Mer-

3741

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3742

chant Marine as being worthy of the roughest, toughest days of men who went before the mast and went down to the sea in ships.

The article is a faithful portrait. I know and would vouch for the honesty of approach and the validity of artistic handling of anything that Helen Brown Norden would do, and if she sat Showboat Quinn down before a typewriter the way an artist would sit his model down before an easel, I know Showboat Quinn has been faithfully portrayed.

3743

Of course, he's a roguish spirit. The by-line here says: "Perhaps his roguish spirit has protected him through mishaps that would have killed or shattered other men."

It is both picturesque and picaresque. He's a rascal and a rogue, and he is so identified. But if you are going to adopt that attitude you would have to junk such things as "The Golden Ass," you would lose "die Valkyrie," and, for that matter, you would have to throw out "Don Quixoté."

Those are particular examples of this particular vein.

You can take Robin Hood, for example, and show how his misdeeds have been many, and yet, whether consciously or unconsciously his purpose has been good.

3744

Chairman Myers: What about the "Three Musketters"?

The Witness: The same thing.

*By Mr. Bromley:*

Q. What connection did this author, Helen Brown Norden, now Lawrenson, have with the Merchant Marine, if any?

A. I thought I explained that to you.

Q. If you did it was so buried that I couldn't remember.

A. Jack Lawrenson is vice-president—I believe he is vice-

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president—but he is the public relations boss and stands for the Merchant Marine. Through his Merchant Marine connection, that is the National Maritime Union connection, being vice-president of that—

3745

Q. That is what I want to bring out. The Merchant Marine Union is the National Maritime Union, affiliated with the C. I. O.? A. Yes.

Q. With headquarters in New York? A. Yes.

Q. And this author's husband is vice-president of that union? A. Yes.

Q. Did she ever have any connection with the union that you know of? A. Not that I know of. I think she has had none except by marriage. She is a skilled writer, formerly was one of the department editors of *Vanity Fair*. She has been one of the outstanding women writers in the upper circles of magazine writing for the last 25 years.

3746

Q. So you would not have expected her to write, or her husband to approve, the composition of an article which would hold the Merchant Marine of our nation up to ridicule, contempt or scorn, would you? A. On the contrary. Every indication is that they would do the opposite under those circumstances.

Q. Do you understand there was such a person as "Showboat" Quinn? A. We had a picture of him along with the article.

3747

Q. Is that his right name? A. "Showboat" is his nickname. Quinn is the last name. The real first name may be in the article.

Q. I didn't mean that. Is "Showboat" his name? A. That is the name he goes by. The photograph accompanying the article was a portrait study done by a well known photographer, but done in anything but formal attire for the camera. He looked just like the character you would imagine



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3748

from reading this article. He is a very rough, tough character, and the scar across his throat—his necklace, as he calls it—

Q. I have been wondering why that piece was classed as an article rather than a story. A. Because it is a factual actual piece.

Q. It is not fiction? A. It is not supposed to be fiction at all. Showboat Quinn exists, and it would weaken the strength and purpose of the article if it were called fiction or done in a fictional manner.

3749

This is meant to be just what it purports to be, a first-hand view or portrait of a hero.

Q. Now, in connection with the Varga girl drawings, have you in the course of the advertising of Esquire magazine published reprints of any of these drawings in newspapers, for example? A. Yes. The March Varga appeared in full page, or practically full page newspaper advertisements in New York, Chicago and some other cities.

3750

The New York "Times," the New York "Herald-Tribune," the "Chicago Daily News," and a few other papers of similar standing, the most reputable and respected newspapers in this country carried this, and this drawing appeared in large size in those advertisements, and without any comment of any kind whatsoever from those newspapers about it.

They published it without any question or without any remark upon it when included in one of our series of advertisements that has been running throughout this year.

That is an institutional campaign addressed primarily to advertisers, endeavoring to make them see eye to eye with us on the desirability of the young men now under arms as a long-term market for steady cultivation at the present time.

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Q. Is this sheet a full-page reproduction of the full-page ad that you have referred to? A. Yes.

3751

Mr. Bromley: Will you mark it for identification, please.

(The advertisement referred to was marked for identification as Respondent's Exhibit No. 94.)

The Witness: Incidentally, if I may comment on that further, the copy accompanying the reproduction serves as an explanation of the phenomena of the pin-up in present-day publishing, not only in our pages but in magazines and newspapers.

3752

It goes on in the body of the text to explain what a pin-up is, defines it as any picture that a soldier would want to preserve and pin-up and look at more than once.

*By Mr. Bromley:*

Q. Speaking of your advertising generally, of which the last exhibit is an example, what can you say as to whether or not you advertise pictures of girls, whether your pictures of girls constitute the chief kind of advertising that you do? A. Oh, no. The campaign as a whole consisted of 28 advertisements run over a period from about the middle of February to the middle of October, and the campaign was given a budget at the beginning of the year as being our promotional effort for the period, and, of the 28 advertisements, half were devoted to heroic episodes, exploits of soldiers not only of the United States, but also of some of the other allied nations, and the remaining half which were exhibits out of the magazine itself, featured some of the stories—as I see one now, looking at it from here, a repro-

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3754

duction in its entirety of a short story from one of the issues. Others featured the airplane paintings by Leydenfrost, featured the various photographs and cartoonists.

One, for example, was a bit of soldier humor, the Time for Income Tax Day, a cartoon as of that moment, and, incidentally, a number of them were the various theatrical and Broadway photographs which were explained to the advertisers in the accompanying copy as our means of bringing Broadway to the boys.

3755

One, for instance, was the "Eve of St. Mark," which has been cited in the material. That also appeared in the "Herald-Tribune," New York "Times," and Chicago "Daily News."

Q. Out of the 28 I can only find five which have any possible reference to pin-up girls or girls at all. Would you say that is about right? A. That is the probable proportion.

Q. And would you say the remaining 23 were in principle of a nature such as this one I show you which reproduces a Leydenfrost picture of a bomber? A. Yes. Whether they have a girl in the exhibit or not, they are all devoted to an explanation of the magazine's present editorial policy and its emphasis on the Army forces.

3756

Mr. Bromley: Will you mark this for identification, please.

(The advertisement referred to was marked for identification as Respondent's Exhibit No. 95.)

Mr. Bromley: I offer in evidence Respondent's Exhibits 94 and 95.

Chairman Myers: Any objection?

Mr. Hassell: No.

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Chairman Myers: It may be admitted.

3757

(The advertisements heretofore marked for identification "Respondent's Exhibits Nos. 94 and 95," were received in evidence.)

Chairman Myers: This is advertising in other papers, isn't it?

Mr. Bromley: Yes. I offered a Varga girl picture to show that other papers carried pictures of that girl and not to leave the impression—

Chairman Myers: I understand that. It may be received.

3758

Mr. Bromley: I have all the other 28 advertising pages with me. I think I will not offer them all now but will rest on the description given by Mr. Gingrich. If Mr. Hassell wants to look at them, he may.

*By Mr. Bromley:*

Q. In the March issue will you refer to the Sultan cartoon at page 49 and explain to the Board your reason for publishing that cartoon and just where the humor lies in it? A. That cartoon is an example of the fatuous.

The obvious comment to make, it seems to me, is that one sentry outside the Sultan's palace is delightedly exclaiming to the other that he wonders how the Sultan knew it was his birthday, while really the girl isn't meant for him. She is being sent from one Sultan to another. It is his birthday, and one Sultan is sending him a birthday present, and she comes through the lines on this sentry's birthday, and it is just as if I would wonder how Roosevelt knew it was

3759

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3760

my birthday, to pick a day of national importance to celebrate. It is comparable to Professor Lamberti taking a bow for his mastery of the xylophone when really the strip tease in the background is causing all the applause. It is a case of fatuousness being the humor, the ingredient of the situation.

3761

This is a basic type of cartoon that we have been running practically since we have been running the magazine. I think the Sultan cartoons have appeared virtually from the beginning, and, in general, the formula is that of tying up familiar terms to an unfamiliar realm of subject matter. It is as if one sea monster would exclaim to another sea monster the difficulty she is having with Johnny's school teacher. It is applying homely terms of our own practices to a foreign concept, to a world that is completely removed from our own. That, in general, would be the underlying formula for most of the Sultan cartoons.

Q. Does that explanation hold for the one that is cited in "Sold American"? A. The same thing.

3762

Q. And the one that is subtitled "What am I bid for this 100 pounds of sugar"? A. That is right. Anything that is in our speech or in our consciousness, at the moment of publication, constitutes a timely reference or timely commentary on something that is timeless and unfamiliar. It is a twist; that is what they call it in the gag-man business, whether it is for a radio program or for a Sultan cartoon, or whatever it may be. It is the way of taking the oldest jokes in the world and putting them in new settings.

Q. Is that true of the fourth and last one complained of, "Such a neighbor, always borrowing"? A. There again the homely reference to something that is familiar in our life is applied to something that is completely unfamiliar to our ordinary experience.

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Q. Now, Mr. Hassell has made some reference to the motion picture "DuBarry was a Lady."

3763

Were Varga girls used in that picture? A. The entire Varga calendar for 1942 served as the basis for a sequence in that picture. They had Varga come out to Hollywood and cast that sequence and pick out of the various girls available, brought together for that purpose by the studio, which one would most nearly approximate or fulfill his abstract concept as represented in the page for January, for instance, of the 1942 calendar. Then they costumed that girl.

As a matter of fact, they had him supervising the costing as well as the making up and the original casting of each character. In other words, he has, as nearly as possible, translated into terms of real life people his calendar for 1942. Then the twelve girls, as I understand it—I didn't see the picture—the twelve girls acted a sequence in which the Varga girls came to life.

3764

Q. Now, does that mean in the January, 1942, issue you published a series of twelve Varga girl drawings just as you did in the 1943 issue of January? A. That is right. It was the January issue which contained the Varga calendar for that year just as our January, 1943, issue contains the Varga calendar for that year.

Q. Can you tell us whether or not before you published that calendar you obtained the approval of this Post Office Department? A. Yes, because we had the arrangement in existence at that time in regard to the specific approval or disapproval of the page for page item of every issue. In other words, we sent down beforehand the entire publication, the dummy, from front to back, and anything that was not approved was called to our attention and there was a substitution that was asked for, and after a substitution was made then the issue was, as a whole, approved.

3765

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3766 Q. I mean for these twelve drawings which you submitted. were any of them disapproved? A. No.

Q. Was that true of the verses, too? A. The verses, there were some changes. There were, as I recall, not quite half of the verses that were complained of, and we wrote new verses and substituted them, so it was the verses and not the calendar drawings.

3767 Q. Now, then, this that I show you are the drawings as they were published in the January, 1942, issue? A. Yes, this is the calendar bound as a separate item, outside of the pages of the magazine, but there is no change whatsoever between the two sets of drawings, as published in the magazine, and as republished in the calendar itself. They are identical.

Mr. Bromley: I ask that that calendar be marked for identification.

(The calendar referred to was marked for identification as Respondent's Exhibit No. 96.)

3768 Mr. Hassell: Mr. Chairman: I understand by the ruling on my motion to strike the portions of the answer, that it is the opinion of the Board that this matter going back prior to January, 1943, issue would be considered by the Board.

I would like to have an objection entered into the record concerning matter going past that issue.

Chairman Myers: The objection is overruled.

Mr. Bromley: I offer Respondent's Exhibit No. 96 in evidence.

Mr. Hassell: The same objection.

Chairman Myers: It is admitted.



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(The calendar heretofore marked for identification "Respondent's Exhibit No. 96," was received in evidence.)

3769

*By Mr. Bromley:*

Q. Now, over what period of time by beginning and ending dates did you submit your magazine to the Post Office Department and receive approval? A. After the December, 1940, issue had one feature complained of by the Solicitor, I came down at that time and saw the Solicitor and arranged a change in that one item in the December, 1940, issue, and then from that period on we submitted the dummy in advance. That would be beginning with the January, 1941, issue, and we did the same with every issue through July, 1942. In other words, there were, I believe, nineteen straight months in which we had a prior clearance of the entire contents of each issue before publication.

3770

Q. Did you get a letter each month with respect to each issue? A. Yes. Before we mailed each month's number during that period we had a letter, and so did the Postmaster in Chicago have a letter, advising them the issue could be accepted for mailing, and in some instances explaining that this or that change had been made in the issue, so that each one of those issues had a letter, simply in a blanket way, saying that the issue had been seen and could be accepted for mailing, or saying that certain features to which objection had been taken had been changed, and that as changed the issue would be cleared for mailing, and could be accepted for mailing by the Postmaster in Chicago.

3771

Sometimes to save time, there was a telegram sent where there might be changes that came after we had gone to press



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3772

or were very close to press time. To facilitate handling of it, Mr. Miles would sometimes send us a telegram, or once or twice we had a telephone call, a collect telephone call, but that was always confirmed by either a telegram or a letter.

Mr. Cargill: What was the date of the last letter that you received, or the last approval?

3773

The Witness: The last such letter would have been in reference to the July, 1942, issue, but, I believe it was May 21, 1942, that I received a letter which told us that we could no longer have our prior clearance, issue by issue, and that was a letter which simply said that from that time forward we would not be able to utilize the facilities of the Solicitor's office for prior clearance of issues; that we were on our own from that point forth.

Mr. Cargill: In other words, you were on your own responsibility?

The Witness: We were on our own responsibility.

Mr. Cargill: As of July, 1942?

3774

The Witness: As of July, 1942. The difference between the dates of letters, you see, was that these things were clearances before publication. For instance, you might have one in April referring to June, in March referring to May, in February referring to April, and so on, you see.

The first one which refers to the January, 1941, issue I believe is dated about November, 1940, and they are approximately a month apart from there on right through.

Mr. Cargill: But you had no authorizations from the Solicitor's office after July, 1942?

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The Witness: That is right, no clearance of any kind on any of our subject matter after the July, 1942, issue.

3775

I had brought down dummies and had occasionally, to facilitate the clearance of the issues, as they came through, had once or twice brought down a batch of cartoons and gone over them with Mr. Gregory, and thus had a guide as to whether they should be put into the issues or not. As I remember, we cleared two batches that way, and then we—

Mr. Cargill: Was that after July, 1942?

The Witness: No, that was before that.

Mr. Cargill: In other words, the issues complained of, though, here, were from January, 1943, on?

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The Witness: That is right; and, Mr. Cargill, the prior clearance that I spoke of—when I say I brought down batches of cartoons, of course we used up the cartoons quite quickly, so it would be only infrequent instances that Mr. Gregory had cleared, say, in the spring of 1942, certain matters, and it might run over into the cited period, because I brought down another batch after we had received this notification that we could not get the monthly clearance any longer, and I couldn't get those looked at; there wasn't any chance to do that.

3777

Mr. Cargill: Were any of the cartoons that were approved of by the Solicitor's office run in any of the issues after January, 1943?

The Witness: As I say, it was a relatively insignificant number because, for the most part, I would bring down a batch of cartoons that might be scheduled to appear, say, in the next three months and go over them with Mr. Gregory, sometimes changing a

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3778

gag line or sometimes dropping one out entirely, but they would be used up, say, within a matter of three months after that, so it would be a matter of sheer accident if there happened to be something that was cleared by Mr. Gregory in March or April, 1942, that was not published, or would not achieve publication until 1943.

*By Mr. Bromley:*

3779

Q. Coming back to Mr. Cargill's question, what about the postal card advertisement that was complained of in one of these issues? A. Well, that would be in this.

Q. Why don't you tell him about it. A. That is true. The Varga drawing with the glass hat, that is what you mean, which is a cited drawing in the "Esky" buy products advertisement first appeared in the December, 1940, issue, which had been passed and cleared as the first of this group. That is when the whole arrangement really began. In the December, 1940, issue, there was one verse complained of.

Chairman Myers: You mean the original from which the post card was taken?

3780

The Witness: That is right, the original from which the post card was taken was in the first of these approved issues, and when I say "approved" I mean if there was specific objection taken to anything complained of then that objection was met by a substitution or change in the contents, so that it was approved by the Solicitor's department.

Mr. Cargill: Is that the only one that you recall?

The Witness: Yes. I would have to check through to find any other possible thing of that sort.

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Mr. Cargill: Well, it is not necessary for you to look it up.

3781

*By Mr. Bromley:*

Q. Now, what you have been referring to is the advertisement that appears on page 146 of "Esky Buy Products," and the figure of the girl in the middle card, the one down on her face with a hat on her back? A. That is right, that is in the Varga calendar for the previous year.

Mr. Hassell: What issue is that?

The Witness: That is in the December, 1940, issue that I went over with Mr. Miles.

3782

Mr. Bromley: That was for July, 1943, page 146.

*By Mr. Bromley:*

Q. Now, was the same Sultan type of cartoon which appears four times in the 1943 issues a regular feature for many years in the magazine? A. Yes, it had appeared with comparative regularity virtually from the beginning of the magazine. I don't recall whether there was one in the first actual issue, there may not have been, but certainly as of that following spring of 1934 the Sultan cartoon began and has appeared with regularity ever since. The Sultan cartoon is one of the oldest features in the magazine.

3783

Q. So in the nineteen issues which were approved by the Post Office Department, there were many Sultan cartoons?

A. There would probably be a dozen. In the course of the average nineteen issues there would be at least a dozen Sultan cartoons. It is something that appears at least issue for issue.

*Arnold Gingrich—for Respondent—Resumed—Direct.*

3784

Mr. Cargill: How did it occur that you made any arrangements with the Solicitor's office to give you a ruling on that before it was published?

The Witness: Why, the December, 1940, issue, the big December issue, was in the mails, or had come to the Post Office for mailing, and we suddenly got a telegram—I believe it was a telegram—saying that the Solicitor's office held that the verse on page so and so of the December issue was unmailable.

3785

That was one of these gate-fold features which was called "The Knight Before Christmas" and consisted of a whole series of drawings, and with those accompanying verses underneath, and, of course, the magazine was all complete. At that moment we had the finished magazine available and the only thing that could be done about it was to make a quick change in the verses and then reprint in black over the page with the new verses appearing in white on the black background. In other words, in reverse. The complained-of verses were in black on a white background. So I flew down and met Mr. Miles that night, to go over the verses, and try to substitute new verses for the ones complained of, so he and I worked over the verses, and then checked, as I recall, with both Mr. Hassell and Mr. Gregory, and I flew back with the revised verses, and I said that we would be very glad to change anything at any time in the magazine to which any objection was taken, but it was certainly difficult to do it after a magazine was all printed.

3786

I said that as of the future if there were any comparable changes to be made we would like to know about them as soon as we could, that we would at least be informed as to them, so he said if we would



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send down the dummy as we had the dummy complete that they would go through it and if there was any objection to be recorded they would tell us about it instantly.

3787

They would tell us about a substitution and we would have time to make it before completing our printing processes, so, having been through the December, 1940, issue we sent down the dummy for January, 1941, right after my return and we did that after that for every month from then on, for 19 issues.

The first six months I don't believe there were any substitutions or any objections whatsoever. That is, clearances came through automatically month-by-month from January, 1941, through and until August, I believe, of 1941 was the first issue in which there were any changes to be made.

3788

*By Mr. Bromley:*

Q. I was looking for one of the letters which Mr. Miles sent to you covering one of those issues January-August, 1941. Have you got them? A. Yes. I think I have them in my brief-case (handing letter to Mr. Bromley).

Q. I show you a letter dated November 19, 1940, addressed to Publisher of Esquire, and ask you whether that is typical of the letters which you received for the first six or seven months of 1941? A. This is typical of the last stage of that process each month. After we had been informed by the Solicitor's department that the issue was cleared for mailing, then the Solicitor's department informed the postmaster in Chicago that the issue was cleared.

3789

Then, as the last stage in the correspondence the postmaster in Chicago would send us a letter confirming the fact.



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3790

either by telephone call or wire or letter, that the Solicitor's department cleared the issue for mailing.

Mr. Bromley: Will you mark this letter of November 19, 1940, for identification?

(The document above referred to was marked Respondent's Exhibit No. 97 for identification.)

Mr. Bromley: I offer 97 in evidence.

Mr. Hassell: Subject to the general objection I made before.

3791

Chairman Myers: Same ruling. It will be admitted.

(The document heretofore marked Respondent's Exhibit No. 97 for identification was received in evidence.)

Mr. Cargill: Had you run into any difficulty with the Post Office Department prior to this time? That is, prior to 1940?

3792

The Witness: Not for a number of years. We have had an occasional communication saying that this or that item of an issue had been regarded as non-mailable by the Solicitor's office, and we had had none since, I believe, 1938. We had had no communication of any kind concerning anything in the issues from 1938.

Chairman Myers: I got the impression a while ago that there was a telephone call or a telegram sent about one of the 1940 issues, about the Varga girl.

The Witness: That was it. I say until the December, 1940, issue we had had no communication con-

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cerning anything in any issue for at least two years and as of the inception of the magazine we have had perhaps twice, I believe in 1936 and 1938, notices where we had this or that specific item called to our attention, saying that the Solicitor of the Department has ruled that page so-and-so of your issue for such-and-such a month has been ruled unavailable. Please govern yourself accordingly and exercise caution so that in the future you will not again publish items which are deemed unavailable.

3793

So the relationship we established as of the end of 1940 was something new in our experience and represented the first opportunity we really had ever had to establish a standard with the Post Office because prior to that anything called to our attention was called to our attention only after the fact and only as a matter of record saying, at some time after-the-instance, the thing you published a couple of months ago has been considered non-mailable.

3794

Mr. Cargill: Do you recall off-hand without any research how many of those issues were ruled non-mailable by the Solicitor?

The Witness: Now, which do you mean, Mr. Cargill? Before 1940?

Mr. Cargill: From the inception.

The Witness: From the inception?

Mr. Cargill: Yes.

3795

The Witness: I would say that there were two or three items in 1936. Perhaps not two or three issues, but there might be two or three items in an issue and I think it was twice in 1936, and I think we were notified as of the same notification, in saying that the issues for March and April you had the following pages

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3796

which were regarded as unmailable; so my recollection of it is two instances of that kind in the whole previous history of the magazine from 1933 to 1940.

3797

So that when we got the notification concerning the December, 1940, issue I called up here to see what could be done about the complained of page in that issue because it was just barely physically possible to get the forms—we couldn't get all of them. That had in some part gone through in the original form. Those copies were put on the newsstands. I think it was a matter of twenty or thirty thousand of them, but then by reprinting over that page we used verses that were acceptable and we were able to get all the rest of it in the new form, and then every copy that went in the mails was in the new form. That is how we got out that issue.

*By Mr. Bromley:*

3798

Q. Coming back to the question, you mean that prior to 1940 there were only two occasions on which you had had only two complaints from the Post Office Department, as best you remember? A. Yes. As I recall it, it was in 1936 and in 1938. That is, there was nothing from 1933 to 1936 and only a couple of issues until the year 1940 when we had this one of which I have been speaking.

Q. So, there was no complaint from 1933 to 1936? A. That is right.

Q. And you think only one or two items complained of in 1936 out of one or two issues? A. Yes.

Q. And again in 1938 one or two complained of items out of one or two issues. Is that what you mean? A. That is right.

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Q. And then nothing until the end of 1940? A. That is right.

3799

Q. And then this system went into effect which lasted until August, 1942, right? A. That is right.

Mr. Cargill: When this matter was complained of and called to your attention and you changed it, do you recall what that matter was?

A. Yes. I have it here, as a matter of fact. It was drawings by Pachner and verses by Phil Stack. It is the same type of verses that accompanied the Varga drawing and it was called "The Knight Before Christmas" and one or two of the instances had two lines of verses beneath to which exception was taken, so between us really we rewrote those verses to get around that objection, and then printed a black background over the page so the new verses could appear in white type against the black background, and then blotted out the white verses.

3800

*By Mr. Bromley:*

Q. Have you got the page complained about? A. Yes.

Chairman Myers: Suppose we take a ten minute recess now.

3801

(Whereupon, a brief recess was taken.)

Mr. Bromley: Will you mark for identification this gate-fold entitled "The Knight Before Christmas"?

(The document above referred to was marked Respondent's Exhibit No. 98 for identification.)

*Arnold Gingrich—for Respondent—Resumed—Direct.*

3802 *By Mr. Bromley:*

Q. Is Exhibit 98 for identification the gate-fold as it appeared originally in the December, 1940, issue? A. Yes. This is the form in which certain verses were held objectionable by the Solicitor.

Mr. Bromley: I offer it in evidence.

Chairman Myers: That is what they ruled out originally, is it?

The Witness: A couple of these verses which are changed in the revised form.

3803

Chairman Myers: It may be received.

(The document heretofore marked Respondent's Exhibit No. 98 for identification was received in evidence.)

Mr. Bromley: Will you mark for identification the Esquire issue for December, 1940?

(The document above referred to was marked Respondent's Exhibit No. 99 for identification.)

3804

Mr. Bromley: I offer Respondent's Exhibit No. 99 for identification in evidence.

Chairman Myers: It may be received.

(The document heretofore marked Respondent's Exhibit No. 99 for identification was received in evidence.)

*Arnold Gingrich—for Respondent—Resumed—Direct.**By Mr. Bromley:*

3805

Q. Will you indicate which panels were changed? A. Panel 9, "And he started at once making passes at her", and then on down to panel 14. Those are the two most noticeable changes.

In other words, the objection was taken to—

Q. Take panel 9. What was it before it was changed and what was it after it was changed? A. "And he started at once making passes at her" is the way it read in the original form and after the combined versifying efforts of Mr. Miles and myself it read "Whose false face revealed a stray husband of hers."

3806

Q. And the other panel? A. It originally read "Then just as the dawn started lighting the sky", and we changed that to read "But long before dawn would start lighting the sky."

Q. Otherwise, the thing appeared and was approved by Mr. Miles in the form in which it was prepared. Is that right? A. I would hate to say that because there may be some minor changes elsewhere in it, but the objection taken was that there was no clear way of showing that this was her husband and we put that in.

Q. I will read panel 1. "'Twas the night before Christmas". A. That is right.

Q. "2— And all through the flat". A. That is right.

3807

Q. "3. There wasn't a sign of a cane or silk hat." A. That is right.

Q. "4. Poor Doris was lounging in her silken bed"— A. That remains the same.

Q. "5. With visions of mayhem in her pretty head." A. That remains the same.

Q. "6.— When on her penthouse roof there arose such a clatter". A. That remains the same.



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3808

Q. "7.— She sprang to her feet to find what was the matter". A. That is the same.

Q. "8. When in stepped a gent who was all dressed in furs". A. That remains the same.

Q. "9.— And he started at once making passes at her." A. That was changed to "Whose false face revealed a stray husband of hers."

Q. "10.— He drank of her Scotch and he drank of her charms." A. That was changed to "She gave him a drink and a casual hug".

3809

Q. "11.— And he held her enslaved in his two manly arms." A. That was changed to "While wondering whether to pardon the lug".

Q. "12.— Resistance from Doris was not very strong." A. That was changed to "With Christmas soon coming temptation was strong."

Q. "13.— And somehow the moments just drifted along." A. That was changed to "To let by-gones be by-gones, although it was wrong."

Q. "14.— And just as the dawn started lighting the sky." A. That was changed to "But long before dawn would start lighting the sky."

3810

Q. "15.— He sprang to his feet and he kissed her good-bye." A. That is the same.

Q. "16.— And she heard him exclaim as he started to leave." A. That was changed to "But." It reads "But she heard him exclaim as he started to leave."

Q. "17.— Just rehearsing, my dear." A. That remains the same.

Q. "18.— I'll be back Christmas Eve." A. That remains the same.

Q. And the pictures remained the same? A. Yes, throughout.

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Q. Now, I show you a letter dated May 6, 1942, signed by Vincent M. Miles, and ask you if that is typical of the kind of letter you received from Mr. Miles after the middle of 1941? A. Yes.

3811

Q. It is? A. Yes.

Mr. Bromley: Will you mark that letter for identification, please?

(The letter referred to above was marked Respondent's Exhibit 100 for identification.)

Chairman Myers: You didn't change any of the pictures, did you?

3812

The Witness: No, we reprinted a black background around the pictures so that the new verses came through in white over the old verses.

*By Mr. Bromley:*

Q. Did you change any of the pictures? A. No. They were already printed with the verses beneath them, so without any change we reprinted an over-lay of black and allowed the new verses to come through in white.

Mr. Hassell: Was this offered?

3813

Mr. Bromley: Yes, I offer it in evidence.

Chairman Myers: It may be received.

(The document heretofore marked Respondent's Exhibit No. 100 for identification was received in evidence.)

Mr. Bromley: Mr. Chairman, I should like to offer in evidence now all of the remaining 19 issues of the

*Arnold Gingrich—for Respondent—Resumed—Direct.*

3814

magazine in the form in which they were approved. Subject to your ruling, may I make the offer now and have them marked at some recess time?

Chairman Myers: Yes.

Mr. Bromley: I offer in evidence all the 19 issues subsequent to that of December, 1940, which were specifically approved as testified to by Mr. Gingrich.

Mr. Hassell: I object to the receipt of this matter and I want the Board to understand that if we go into this we must necessarily go into considerable details in the files of this office to show the whole picture. This only shows part of it.

3815

Chairman Myers: It strikes me, Mr. Bromley, that we are getting pretty far afield. All this testimony has been directed to the allegations set forth in your answer, but to put all those issues in it looks to me like is just cluttering up the record.

Mr. Bromley: I had in mind a specific purpose, Mr. Chairman, and that is to show in this way what seems to me a complete item of proof, as to what current standards were recognized by the Post Office Department.

3816

I do not expect to rely on any theory of estoppel of the Post Office Department. I don't think it is competent for that purpose. But it does seem competent to show the judgment of this Department about current standards of morality.

Chairman Myers: Haven't you that in the record by what you have shown by this witness?

Mr. Bromley: I have that they approved them, but not what they approved.

Chairman Myers: You have in one issue, the last of the exhibits prior to this, where the changes have been made.

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Mr. Bromley: Yes, sir; but that is only one-nineteenth of what the Post Office Department approved and I think an inspection of those nineteen issues will show an approval of everything which is now here disapproved. 3817

Mr. Hassell: May I say a word before you make your ruling, Mr. Chairman?

Not in support of counsel's contention to the admission of this matter, but I may state that the answers to questions by Mr. Gingrich on direct thus far have opened this entire matter up. I understood—perhaps I should have objected to each one of those questions—but I understood the position of the Board was that it was going into this matter. Manifestly, if I am shut off from cross examination in developing this whole story— 3818

Chairman Myers: You won't be. They have already touched on it to such an extent that on your cross examination you can go into everything, but it seems to me on this point that this objection should be sustained subject to future development.

If we consider it necessary later to have them in, we can change the ruling. For the present the objection is sustained.

Mr. Bromley: I would like to limit my offer to the August, 1941, issue and attempt to prove that is typical of the others. 3819

*By Mr. Bromley:*

Q. I show you the issue of Esquire for August, 1941, and ask you whether in the form in which you see it it was approved by the Post Office Department? A. Yes, sir.

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3820

Mr. Hassell: I object to this. This witness has used this form of testifying that a certain thing is typical—recently with respect to a letter this office wrote. I understand it is not at all typical.

You are trying to get this matter in based on a picked issue of this publication and if we do that I think we should go into all of it.

Chairman Myers: Would you prefer to have the whole nineteen put into the record?

3821

Mr. Hassell: I don't think any of it has any pertinence in this issue and I so stated in my objection, but if we are going into one issue to show it is typical, naturally I will have to go into others to show it is not.

Chairman Myers: I think you are entitled to.

Mr. Bromley: Well, let me finish my offer.

Chairman Myers: Yes. Suppose we solve the question this way: by admitting the entire nineteen issues so that Mr. Hassell will have a free field for his cross examination. They may be marked at a later time.

You will reserve 19 numbers.

3822

(Thereupon, Respondent's Exhibits Nos. 101 to 119, inclusive were reserved and subsequently the Reporter marked the issues of Esquire Magazine from January through December 1941 and January through July 1942, respectively, Exhibits Nos. 101-119, inclusive.)

*By Mr. Bromley:*

Q. Now, will you refer to the July issue of 1943, at page 81, which is the paste-your-face cartoon, and explain to the Board the purpose and significance of that feature? A. This was offered to us as a series of three photographs by Erwin Blumenfeld, depicting the Army, the Navy, and the



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Marines. The pictures, of course, were received complete with Blumenfeld's crayon indications of how to cut out from the complete photograph the indicated area in order to provide a place for the individual Marine or soldier or sailor to substitute his own features, his own likeness, over that of the one who posed for the picture in the first place.

3823

Q. When you say "complete", do you mean the sailor's face appeared in the photograph? A. Yes. As they came in the complete photograph came, marked as to what should be blacked out in order to create the blank for the substitution of one's own likeness for the features of the man in the original cartoon.

3824

Q. Is this thing that I hold in my hand the original photograph? A. That is the original for August, the second of the series.

Q. Second of the series? A. Yes.

Q. I show it to the Board (holding up before the Board).

You mean the face of the sailor was in there when it came to you? A. That is the original photochrome from which the page was printed.

Mr. Bromley: Can the Board see it?

Chairman Myers: Yes.

The Witness: Then you can see marked in red crayon over the photochrome to show how to cut it out.

3825

*By Mr. Bromley:*

Q. What was your purpose in publishing that series? A. Our purpose was to provide entertainment for the members of the armed forces from which they could get some amusement. It is the type of thing that seemed to us to have a great deal of appeal to the individual member of these various services.



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3826

We had immediate response, as a matter of fact, to this Marine picture from the mothers of two of the boys, as I recall, who had received the pasted-in pictures from their sons. One was a woman whose boy was in the South Pacific area somewhere and she commented on the fact that as it happened he had the very same medals and campaign ribbons that are on the breast of the marine who posed for this picture, and she was pleased and amused by the rest of it.

3827

Q. Coming to the paste-your-face picture in the August issue, complained of, did it ever occur to you that the phrase "paste-your-face here", on the white head could have any indecent significance or connotation? A. No. We began the previous month and, of course, we continued the same technical form of carrying the picture with the instructions summarized for brevity, and in connection with all three of them we explained in the accompanying copy at the left-hand page at great length, just how to go about pasting your face here.

We told them how to clip the picture and to use some library paste—I think we said "flour from the cook's galley will do."

3828

Q. And then you said "Paste your likeness in the indicated blank space," did you not? A. Yes.

Q. Was the phrase "Paste your face here", used on each of the other two of this series? A. Yes, a standard phrase went through the series.

Mr. Cargill: Who selected that phrase?

The Witness: I suppose I did. I think I must have done that. I remember working on the series with our production man who would normally ask me on anything like this going through, for instructions

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as to what it should say, whenever there is anything that is to be inserted into a mechanical arrangement where there is a combination of type and pictorial, whether it is a sub-head to go beneath one of our sporting prints or an identifying caption of a reproduction of a painting—he will always ask me “How do you want this to read,” and I will give him a phrase. 3829

I will write it on a slip and he will attach it to the piece of art work in sending it through for plates to be made.

Mr. Cargill: Did you have any discussion with anybody about that phrase? 3830

The Witness: Not other than with him. Probably I wrote it out for him or I may have written it right on the lay-out. It is the shortest way to summarize what we say in practically a paragraph on the page opposite.

Mr. Cargill: If you had used the phrase “Paste your photo here” instead of “face”, would that have been as short?

The Witness: It would not have been quite as true, Mr. Cargill, because it is only that portion of a photo which would fit this spot that is meant. That is, your face in place of the face that would be here. In other words, put your face in place of what would be the face. 3831

And a more detailed discussion is over here (indicating).

The possibility of there being any other connotation in “paste your face” certainly never entered my mind in any of them. The standard phrase, as it happens, began with this one, which is the first. The man is standing there.

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3832

Mr. Cargill: Did you select the order in which they would appear?

The Witness: I believe so. They all came in at once, so they were all put into work at about the same time, but whether one began it or another began it, was more or less happenstance. I think the only thing that may have induced me to start with the Marines, rather than the Army or the Navy was that we had several complaints saying "You are always running something for the Army or the Navy and the Air Force, and what is the matter with the Marine Corps?"

3833

That would have been the compelling motive to begin with the Marines.

I think it is a matter of sheer chance as to whether the Army came next or the Navy came next on the rest of the order.

*By Mr. Bromley:*

3834

Q. Now, will you please tell us something about this man Varga who draws the Varga girl drawings? A. Varga is a Peruvian by birth but a European by education. He spent very little time in Peru but was taken by his family to France in his early youth and most of his schooling was received—I believe all of his schooling was received in either France or Switzerland, and his art studies along with his other educational preparation, were in Europe.

He came to the United States about 1915, as I recall it, 1914 or 1915, just after the beginning of the last World War, and the first professional work he did in the art field was for Ziegfeld. He began making posters for the Ziegfeld Follies as of about 1916, and all the various Ziegfeld girls

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were portrayed by Varga in large posters which were used for display in the lobby of the New Amsterdam roof and the theatre display posters, and for a long time, until Ziegfeld's death, he did do other work, but for the most part his patron really was Ziegfeld.

3835

After Ziegfeld's death he moved west, and he went to Hollywood and he lived in California for a period from perhaps 1928 or 1929 to 1940. He didn't do as well in Hollywood as he had done in the twenties in New York. He had a job in the M-G-M art department and he was doing layout work in conjunction with the scenery, that is, the sketches for the various elements of the motion picture productions, and he had done some portrait work from time to time, but aside from that he had not been in his stride, let us say, of doing the kind of thing he had done best in the Ziegfeld period.

3836

Q. Do you have him under exclusive contract or does he work for others? A. We have him under contract and he does do work for others, but subject to the provision that we have first claim on his time. He can accept and has accepted advertising work and the only proviso is that he can do it but he cannot let some advertising deadline interfere with our work.

Q. Do you remember the reference in "The Sound and the Fury" which Mr. Hassell pointed out, from some reader, that these pictures are made from nude models? A. He may have his wife hold a pose to observe muscular play or something of that sort, but they are not done as a matter of representation of any living person. As a matter of actual practice we are very apt to provide him with things to utilize in creating these various poses.

3837

We will make a clipping of some attractive new hair-do or costume or pose out of the newspapers and magazines

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3838 and snip it out and send to Varga as a suggestion for future Varga girls.

Often he will make one that may be a composite of three or four such clippings.

I recall in the case of February in the calendar, the hair-do there came from a clipping that was out of the New York Times, and the pose of the girl came from another clipping, and that, as it happened, was from a photographic magazine, I believe Popular Photography. The clipping for the lower half, below the head, was the nude, and she was at the side of a spring or by the water, so he did the drawing as he does all of these—he drew the body completely and then drew the costume as an over-lay, superimposed. He does that to get the anatomy in true proportion and to make sure that the muscular play in these various poses is completely life-like before he superimposes the costume.

3839

As a matter of hearsay, it is quite possible that this reader who says "I have heard that Varga works from nude models" may have seen some publicity to the effect that the drawings are done in their entirety in the nude before they are completed as costumed drawings.

That is different than saying you would work from nude models.

3840 But the composite source of his various poses is quite a procedure, in this case in point being the hair-do and the pose of the head from one picture, superimposed on the body pose taken from another.

And then, as a third phase of the completion of it, the selection of the costume and the superimposing of that on the completed drawing.

Q. Now, in connection with the review of the "Star and Garter" which appears in the issue of January and which you hold in your hand, by Gilbert Seldes, is there anything more



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frank or forthright in that description of what is presented on the stage than there is in theatrical reviews where shows such as these are reviewed? A. Oh, no. As a matter of fact, I would say Seldes is less lingering in his emphasis upon detail of that nature than the recent reviews of the Katharine Dunham dance recital in New York, where the intent and purpose, I know, is an artistic one. 3841

Katharine Dunham has studied for years, enjoying the subsidy of the Rosenwald Foundation, to develop in our dance form some of the native dances of Haiti, and yet the reviewers viewed her latest performance like little boys behind the barn. 3842

Q. Is this review by Ray Barrett, in the September 21, 1943, issue of the New York Daily News, typical of the kind to which you refer? A. Yes. I was recalling this phrase "bumps and grinds".

Mr. Bromley: Will you mark this for identification, please?

(The document above referred to was marked Respondent's Exhibit No. 119A for identification.)

Mr. Hassell: I object to this. 3843

Chairman Myers: The objection is sustained. You may make an offer of proof.

Mr. Bromley: The offer of proof is contained in the article itself and the description of the dance. That is all.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3844

*Cross Examination by Mr. Hassell:*

Q. How long did Esquire run as a quarterly, Mr. Gingrich, before it was converted to a monthly? A. There was only one quarterly issue. After its appearance as a quarterly the decision to change it to a monthly was made almost instantly upon the magazine's appearance. There was only one issue called a quarterly.

Q. Was that issue of Esquire known as "Autumn"? A. Autumn, 1933, yes.

Q. 1933? A. Yes.

3845

Q. I believe you testified that when you started out with Esquire the idea was to give it a certain stag party flavor. Is that the term you used? A. I said that the humor in the first phase of the magazine, during the first year, when it was limited to about 100,000 circulation; I mean, the humor of both cartoons and articles was of the stag party variety. Yes, I used that phrase.

3846

Q. What did you mean by that? A. Well, I had this in mind: If you recall in my direct testimony at that point, Mr. Hassell, I tried to emphasize that I was speaking relatively, as of between the beginning and ending phases of this magazine's development, from then until now, and I said that we ran the stag party type, or we called it the smoking room type of humor because we felt that the magazine was in restricted circulation.

Now, I would like to again emphasize that point, speaking of manners and conventions among men subjects, men are out together, hunting or fishing; two men go on a hunting expedition or camping expedition, and one or both step over to a corner fence post and urinates in plain sight of each other, but away from people. That would be something that was in keeping with the nature of the company present;

*Arnold Gingrich—for Respondent—Resumed—Cross.*

whereas if they did such a thing at a formal dinner party with ladies present it would be an indecency.

3847

Now, the whole thing has a relative point, that things that you find are appropriate in one setting would be distinctly out of place in another setting, so as the circulation broadened we got away from the original emphasis on the men only angle; that is, the anti-feminist or feminized viewpoint; both in our fiction and in our cartoons.

It was an opening phase of the magazine that was quickly outgrown by the circulation and by the broadening of the audience.

Q. That applies to the fiction and the cartoons and the jokes in the magazine? A. Yes, it applied I think most notably to the cartoons but also in that phase we rather emphasized it in the articles and in the stories, too.

3848

In the earliest phases of the magazine it stressed always the attitude of men alone, men apart from women. Now, that is a developing phase that has been considerably modified and changed since the magazine has gone on.

Q. Now, how does that apply to the pictures such as the Varga girl pictures you publish? A. Well, the Varga girl pictures are certainly a kind of thing we would see no objection to presenting in mixed company; in fact, we consciously do present them in mixed company in the sense that we know we have both men and women in our audience now, and the women readership is a large one.

3849

Q. Now, referring to the early policy of the magazine, did you carry pictures of that sort? A. Oh, we had full page cartoons. The only thing that you could call in any way comparable to the present pin-ups size and the pin-up treatment of the Varga girl was the first phases of the Petty girl, but even there there was quite a difference because in the original presentation the Petty girl was only a type of

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3850

cartoon like the others, with a gag line, usually with two or three figures in the cartoon, so you can't really find a parallel in the early issues of the magazine, oh, up until 1940 with the Varga feature; that is in this later phase of the magazine. We had no such feature at that time.

3851

Q. I believe you testified that the Varga girl feature has been an outgrowth largely of the demand brought about by the war? A. Yes, the pin-up—the emphasis I think is something that resulted from the war, our reaction from the British Army and armed forces went through its first couple of years and constituted the first demand for a pin-up type of material, and then, of course, as the conscription program got under way in the fall of 1940 we began to anticipate the demand because we were guessing that it would be comparable in this country as we got into the war, to what had been in the British services as of the previous couple of years.

Q. Now, you referred to, I believe you named it the girl-gag type of humor. A. Yes.

3852

Q. What did you mean by that? A. I had in mind a magazine that is made up almost exclusively of leg art, girl gags. We call that gold-digger gags, where all of the cartoons have only one very narrow vein of humor, that is confined exclusively to sex jokes, chorus girls, gold-diggers and that sort of thing, and where the magazine as a whole contains no other type of either text matter or pictorial matter; citing that as a girl-gag magazine where that predominates and pervades and consists of virtually the entire content of the magazine.

Q. I believe you testified on direct that Esquire had become conspicuously successful in this type of humor and that brought about imitators, and you mentioned the girl-gag

*Arnold Gingrich—for Respondent—Resumed—Cross.*

and leg art publications as being imitators of Esquire. A. 3853  
I said imitators of one phase.

Q. Of one phase of Esquire? A. Yes. And I said that because they distorted or over-emphasized or played up only one facet of the magazine's original formula, they cheapened for us and made less desirable to us that aspect of our original formula.

They coarsened, I wouldn't say coarsened; but they cheapened almost the desirability and value of that kind of material by making it a commonplace, whereas we had thought of it as being a smart and an exclusive type of feature.

Q. Now, you have gone into some length of your editorial formula. In response to questions asked you on direct 3854  
you undertook to give the percentage of material devoted to each editorial feature as I understand it. Isn't it a fact, Mr. Gingrich, that Esquire has had an editorial policy to carry in the magazine these jokes that we refer to as girl-gag jokes, cartoons dealing with a sexy matter, the Varga girl pictures, and other matters such as were called attention to previously in this hearing? A. In their proper proportion in the context, the magazine as a whole, yes, we have cartoons that do feature sex.

Q. I say that is a part of your editorial policy? A. That is a part. I agree it is a part, yes.

Q. The articles or letters carried in "The Sound and the Fury" in these eleven issues or in some of these eleven issues of the magazine, I believe you said were to reflect the range of comment made by writers to you? A. Not to reflect the entire range of the comments that are sent in to us. You can't do that in the limited space you have, only to pick out from the reactions you get, those that seemed most noteworthy from the point of view of their own value as entertainment. I mean, if you made an attempt to reflect every 3855

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3856

reaction received to the magazine you would get first of all a very dull feature there by having to put in the letters that come in that just say "I like this" or "I like that" or anything that would be deadly dull, so in reflecting the reaction of the readers we tend to skip or pass over the average fan letter type which comes in and says "This is great" or "I like this" or "I like that". In that type there is no entertainment, and we tend to play up those where a fellow either is a sorehead or is a wisecracker or does an entertaining job of giving us a going-over.

3857

It is the old formula of the comedian who lets his stooges push him around. Jack Benny has made a fortune doing just that, letting them make him out to be a dope, and that is in general what happens to us on those pages in the kind of letters we do tend to emphasize.

Q. You did not take objection to the characterization of the cartoons carried in Esquire in this letter or article that you reproduced on page 6 of the January issue "Shor Nuff" where the cartoons were referred to as spicy? A. If we—

3858

Q. Do you think it is a correct reference to these cartoons? A. I may not agree with that characterization, but if I had to limit the things I publish in the magazine to the things I agree with I think it would be vitiating the editorial content. My own conception of what it may be is perhaps a prejudiced one, but in any case the function of an editor is not to publish only the things with which he agrees or even to limit the publication to the things of which he would say that he approves them by publishing them.

In other words, the same thing would be true of the "Goldbricking" feature, the Army camp jokes, that if I thought every one of those was hilariously funny or confined the page only to the ones that I thought were hilariously funny, I am afraid we couldn't fill out the spread.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

Q. I say, you didn't take this characterization of the policy of Esquire contained in the first paragraph of this "Shor Nuff" as being derogatory or libelous, did you? A. Oh, no; I wouldn't feel that way. I thought it was a good humored reference and one that was perfectly in keeping with the tongue-in-cheek attitude as a whole. He is kidding the shirt off the magazine, he is kidding the writer himself, it is a kidding reference, and I certainly would not be insulted by such a reference, to the point of deleting it or changing it. We never do that with those things that we reprint in "The Sound and the Fury", and that type of thing, as we have done it off and on throughout the magazine's history, is something where we follow the old phrase "Don't omit my moles; don't pretty me up; don't leave anything out" even in that type of sorehead reference that we get we print it. We think the magazine's reputation can stand any such characterizations as appear in "The Sound and the Fury" or that type of reference which appears there.

3859

3860

Q. Have you printed in "The Sound and the Fury" or these other places in your magazine any letters you may have received from persons objecting to the salacious character of that matter appearing in Esquire? A. Yes, we have had letters in the course of years, which are extremely vituperous, and while I would not agree with your characterization in your question of the matter as salacious matter, we have had letters which we have printed, taking us to task and sometimes expressing the most narrow-minded point of view.

3861

I can recall printing letters in "The Sound and the Fury" that took exception to the language in various stories and articles and may have put in an editor's note explaining the reason for the matter complained of, but we have certainly often enough published that kind of reaction to our content, I will say.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3862

Q. Can you point out instances in these eleven issues where that is so? A. I think that there is one instance where there is a letter "Burned out at the age of ten".

Q. What issue is that in? A. I don't recall. I don't have any reference for it, Mr. Hassell. I mean it is just in the course of looking through "The Sound and the Fury" I remembered it. I think that as long as the page as a whole is in evidence as it is in all of these eleven issues, that the point I make is that the average letter is one that is panning us rather than one that is praising us, and that will be perfectly apparent by looking over them all.

3863

Now, they are panning us for any one of a dozen reasons. Some say that we have become so prosaic that we are more of a Woman's Home Companion, and they are disgusted with us, the magazine has lost its freshness and its kick. That may be one of them.

3864

I referred to "Burned out at the age of ten", but in answer to your general question as to what we did as a matter of policy, I was telling you of my recollection of "The Sound and the Fury" as an institution over the past ten years, and we have had many letters of the type to which you have referred, and certainly if we have had fewer of them now in these eleven issues than we have in the past, it is simply that it would reflect the fact that they find fewer things of that kind to take exception to than was true in the early days of the magazine. Perhaps we do not offer the grist as we did in the earlier days.

Q. Esquire has and does enjoy the reputation of being sophisticated and risque? A. No, I don't think it does nor have I been able to see any evidences of it. The magazine is known as a sophisticated magazine, I think that is perfectly true, but the reputation of the magazine as a whole. I would say that the common references to it by audiences

*Arnold Gingrich—for Respondent—Resumed—Cross.*

and comedians on the programs, by references on the stage, by references in print when you come across them, that the number one connotation would be a man's fashion magazine, and that the number two connotation would be a sophisticated magazine, but by and large over the years and even now the average reference to Esquire, the one that you will encounter in print, whether it is in a novel or another magazine story or wherever it is seen, is "He looked as though he had just stepped out of the pages of Esquire". That is a way of saying that "He looked as though he had stepped out of a band box", so that is the characterization with which we are most familiar. That is the type of reference which we encounter most frequently.

3865

Q. You referred, I believe, to the article "Marriage Makes Strange Bedfellows", page 44 and 175 of the January issue.

A. Yes.

3866

Q. As being one of a piece in your policy to educate a man in the understanding of women. I believe that was the reference you made to it? A. Yes—

Q. I notice in the first paragraph of the text on page 176 you make reference to a book, in the center of the complete paragraph on that page, you say "Even in countries where there's practically complete sexual freedom (for instance, the Trobriand Islands as described by Dr. Bronislaw Malinowski in 'The Sexual Life of Savages') men and women end by pairing off and settling down in a comparatively permanent and exclusive union." And so forth. A. Yes.

3867

Q. Are you familiar with that book "The Sexual Life of Savages", by that author? A. No. I assumed that it was a book that would be of a relatively restricted type; that is, as a study for students in the field. I have never seen the book, no.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3868

Q. You don't know whether the book is obscene or not? That is, for general circulation? A. Oh, quite possibly, because in my own reading of that I assumed that such a book would be a case study type of material, like Krafft-Ebing or anything else. It may be a study of sexology and many of those things are not available for general circulation, I don't know that it is and I don't know that it is not, but I rather assume that it probably would be. When a foot-note type of reference like that, in an article in substantiation of a statement of general customs of the country appears there, I would accept it to be a sexologist reference book or case source book type of thing.

3869

Q. But you didn't look it up to see whether that was an obscene book and this reference to it might be in effect an advertisement of it? A. No. As a matter of fact, the very fact that we have no mail coming in asking us about that book clears my own mind of any feeling that there might have been an advertisement of that book by a textual passing reference like that. Certainly a citation in the middle of a sentence that is justifying marriage not merely as a convention of our society but as a natural thing in countries where customs do not impose it, would seem to me the last place to incite somebody to look for obscene material. The sentence begins and ends with anything but an inflammatory reference.

3870

Q. You referred to the cartoon on page 59 of the January issue, Mr. Gingrich. A. Yes.

Q. As being a tendentious cartoon. What did you mean by that? A. I can't imagine without knowing what the context was. As I recall, I was talking about different varieties of humor and I don't think that that is where I could have used the word tendentious; without bothering to go back for the record, I did mention a cartoon some-

*Arnold Gingrich—for Respondent—Resumed—Cross.*

where near there as being a propaganda type of cartoon. Tendentious in that it was advancing our interest as opposed to that of the Japs. I think that is where I used that adjective. 3871

Q. The prior one, page 57. A. Oh, yes; that was the one.

Q. How did you classify that? Let us leave that tendentious business and turn over to page 59. How do you classify that cartoon? Is that one of your classified cartoons like the Sultan cartoon? A. Yes. That is a recognized classification. That is the dumb female specialty of Shermund. She has done it with extreme skill for us and for a number of other magazines—the New Yorker and occasionally Colliers—and the whole field for Shermund, who is herself a woman and enjoys perhaps a back-stage advantage in that respect, is to take the silly remarks of empty-headed creatures—I mean empty-headed females—and usually they are in what you would call roughly a dumb-blond category, and she has made herself a very fine living out of it for the past ten years. They are all the kind of humor that lies very often in verbalization, where the girl makes a remark that if made by a more understanding person with a greater amount of I. Q. would have a quite different significance than coming out of, as it were, the mouth of a mental babe. That is Shermund's specialty in other words. 3872

Q. Do you know why the breasts of the female shown in this cartoon are shown as being so much over-emphasized? 3873

A. It is a family trade-mark of Shermund's work. She has specialized in the obvious exaggeration of all the curvacious element of the female form. In virtually every cartoon she ever drew in her life she has done that. I don't think Shermund could by now draw them any other way.

She has been perfecting this typical Shermund girl for

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3874

ten years, to my knowledge, and fashion is beginning to catch up with her in that respect because the degree of over-emphasis to which she indulged seven or eight years ago was much more out of keeping with feminine fashions than it is today. Feminine fashions are beginning to give the same over-emphasis now that she has been giving for years.

Chairman Myers: One member of the Board has a rather important matter that requires his staying away somewhat longer, so we will adjourn now until two o'clock instead of one-thirty.

3875

(Whereupon, at 12:00 o'clock noon, the hearing was adjourned until 2:00 o'clock p. m.)

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AFTERNOON SESSION

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(The hearing was resumed, pursuant to the adjournment, at 2 o'clock p. m.)

Chairman Myers: Proceed, gentlemen.

3876

ARNOLD GINGRICH resumed the stand and testified further as follows:

*Cross Examination by Mr. Hassell (Resumed):*

Q. Mr. Gingrich, you testified that you sold enormous quantities of the Varga calendar, the Varga girl calendar.

A. Yes, the calendar outside the pages of the magazine itself, as a separately bound unit.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

Q. You enter into a circulation campaign to sell those, do you, aside from the advertising appearing in *Esquire*? 3877

A. There have been some sales by agents and, I believe, there has been some advertising in media that go into that field. That is not so much advertising of the calendar as advertising for agents who handle things of this sort.

Q. Do they use this so-called *Esquire Service Man's Kit* to make their sales? A. I don't recognize from that name, Mr. Hassell, whether that is a kit used by agents or not. I don't recognize it by that term.

Q. These *Esquire Buy-Products*, what do they include? A. That began with the *Varga* calendar and has been expanded to include playing cards with *Varga* designs, over-size post cards which have carried reproductions of various color features that have appeared in the magazine in the past. 3878

They include *Hurrell* photographs, caricatures by *Arthur Szyk*, the Polish caricaturist, a selection of color cartoons, bird and dog sporting cuts by *Walter Bohl*, perhaps one or two other subjects, and then also the date book which has in some years been featured by the *Petty* drawings and in some years by various photographic features.

The current date book is made up of a number of features out of the magazine, both text and pictorial.

That is about in general what the line comprises. Anything that we may want to make a side sale out of aside from the pages of the magazine would be characterized as *Esquire Buy Products*. 3879

Q. I believe you said you had a department devoted to the sale of those? A. There has grown up within our organization a reprint department which is now called the *Varga Girl Calendar Sales Division*. That is almost a separate business. Those people in there are concerned en-



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3880

tirely with the handling of the Varga calendar sales, both through agents and through the pages of the magazine itself. They also handle any of the other Buy Products; that is a separate department.

Q. Is E. R. Crismier the head of that? A. What is that name?

Q. E. R. C-r-i-s-m-i-e-r? A. I don't recognize the name. I don't know.

3881

Q. I show you a letter which appears to be a circular letter, signed E. R. Crismier, Esquire Magazine for Men, to which is attached a circular, and ask you to state whether that is the type of letter that has been sent out, a circular letter? A. Yes, this is apparently a circularization to firms to send this material to employees now in service. Now, as it happens the name is one that is not familiar to me, but it is a typical mailing piece, yes.

3882

Q. As a result of sending out circular matter of this sort, did your company sell these hundreds of thousands of Varga Girl Calendars that you refer to in the record? A. No, the increasing sale of the Varga calendars that I mentioned from one year to the next was very largely accounted for through the magazine itself. It is in the last years or so that with the addition of the various Buy Products and the increased activity of this division of our company that we broadened out the activities in this way. There have been some different varieties of the Varga calendar in the past year than there had been prior to that time. Originally it was simply as featured in the magazine, and it was really a reprint business. That is, copies of the calendar bound separately as the one we introduced in evidence of the January, 1942, issue this morning.

Q. You do feature Vargas on playing cards and the date book in addition to the calendar? A. I think I am wrong.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

if I even included the date book, because there have not been any drawings by Varga in the date book. That has been photographic material, and sometimes cartoons, but not Varga drawings. With the exception of the date book, I would say that that is true that there is a Varga series in the post cards, and that there are Varga playing cards.

3883

Mr. Hassell: I would like to offer this circular, with certain material attached to it in connection with the witness' testimony.

(The circular referred to was marked for identification as Post Office Exhibit No. 28.)

3884

Mr. Bromley: No objection.

Chairman Myers: It may be received.

(The circular heretofore marked for identification "Post Office Exhibit No. 28," was received in evidence.)

*By Mr. Hassell:*

Q. Mr. Gingrich, have you solicited or attempted to sell any other features in Esquire than those referred to in this exhibit? A. Yes. Men's fashion color charts and men's fashion style books.

3885

Q. How does the sale of those compare with the sale of the Varga calendar, and the playing cards, and so forth? A. Well, the most intensive exploitation, of course, has been done on the items that are featured in the Esquire Buy Products. We have never had any comparable sales facilities for anything else.

But through the pages of the magazine we have from

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3886

time to time offered books on cooking, books on dress, and at the time of the New York World's Fair we had a guide to New York. That sold very widely. I think we sold something better than 50,000 or 60,000 copies of that. The response to dress charts has been somewhat less than that. I would say that on an average we would run to somewhere around 25,000 on that type of feature.

I neglected to mention the jig-saw puzzles in mentioning the Buy Products before.

3887

Q. You referred on direct to a reproduction of some cards received by you from German prison camps—that was page 197 of one of the issues here, I have forgotten which, perhaps the January issue— A. Yes, January.

Q. —with respect to this matter being a morale builder. Have you received any intimation, Mr. Gingrich, that a good many men in the service don't want scantily clad females with a view to building up their morale? A. It would be hard to relate that question to my own experience.

Q. You mean you never have gotten any letters from any service men saying that they were not interested in Varga girls? A. No, not making that the chief point of their communications.

3888

We have had a great many letters from service men about virtually every aspect of the magazine's contents. It is quite possible that we have had some from men who said they were more interested in the sports features than in the cartoons, but I don't recall any letters from service men objecting to the magazine as a whole.

They may have expressed preference for one part of its contents over another.

I do recall a letter in one of the "Sound and Fury" pages saying they didn't like Salvador Dali and that is a common reference to liking some one feature more than another.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Q. Did you see the recent statement of Adolphe Menjou after returning from North Africa as an entertainer, with respect to the service men about to go into battle not being interested in salacious matter? A. No, sir; I didn't see that.

3889

Q. Published on page 48 of the New York "Daily News" on October 27, 1943, reported in this style:

"Adolphe Menjou, just back from overseas, where he put in 51½ months, telling Greer Garson and this reporter at 21 that acts going overseas should delete the dirty stories they add to their routine. 'Soldiers and officers deeply resent the attitude of some U. S. O. camp show performers who apparently feel the men want filthy gags,' fumed the veteran movie star," etc.

3890

You had not seen that? A. No, I recall seeing a story by Larry Adler in the Chicago "Sun," who had been entertaining troops in North Africa along with Jack Benny, and the story came to my attention chiefly because he referred to the omnipresent sight of the Varga pin-ups, but I didn't see the Menjou story at all.

Q. Did Esquire receive any complaints that had been circularized with this letter, Government's Exhibit 28, with respect to the distribution of that sort of matter? A. No, I think I would have known of that because as a matter of policy all comments that are received along with orders for material are routed over my desk—that is, if a man orders a subscription, or any of these things that are done in solicitation, and pens any side comment, whether the comment is a complaint or whether it is a boost, either way I get it.

3891

Q. In that connection I call your attention to a letter—it is a copy of a letter—which purports to be—it is a

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3892

signed copy addressed to Esquire, 919 North Michigan Avenue, Chicago, under date of October 2, 1943, the envelope of which was mailed at Cambridge, Ohio, on October 2, 1943, which is attached, signed "Walter O'Malley, Secretary-Treasurer, Cambridge Glass War Service Committee."

That appears to be such a letter as you have been talking about, doesn't it? A. Yes, and that letter and any other letter that I have had since October 2d would probably be on my desk since I have been busy with other matters since that time.

3893

Mr. Hassell: I offer a copy of that letter in evidence in connection with Mr. Gingrich's testimony.

(The letter referred to was marked for identification as Post Office Exhibit No. 29.)

Mr. Bromley: Objected to as immaterial.

Mr. Hassell: I might state that a copy of this letter was sent along with the circular matter already in evidence as P. O. Exhibit 28.

Chairman Myers: Objection overruled. It may be admitted.

3894

(The letter heretofore marked for identification "Post Office Exhibit No. 29," was received in evidence.)

*By Mr. Hassell:*

Q. What connection, if any, do you have with the circularization of the book called "Bedside Esquire," Mr. Gingrich? A. No connection whatsoever. The book was originally published by Robert M. McBride & Company, and I have



*Arnold Gingrich—for Respondent—Resumed—Cross.*

a personal connection with it in that I wrote the introduction for that edition, and that I assisted in the selection of the items contained in it. 3895

Since its original edition it has been reissued to another publishing house in a reprint edition, and I understand that in this last year or so it has been widely distributed and quite often we get mail about it that comes to us, but we don't have any publishing connection with it whatsoever.

Q. Does that contain matter taken from Esquire? A. That is a selection of textual features, both stories and articles, selected, as I recall it, about in the spring of 1939 and issued as an anthology of Esquire writing. It ranges over selections made from the very beginning up until that time. 3896

Q. Is it true that this book was edited by you, Mr. Gingrich? A. Yes.

Q. And the cover of it so shows? A. I made the selections of the material and wrote the introduction to the book.

Q. Did you approve of this circular advertising the book that I show you? A. No, and as a matter of fact we were forced to make representations against these people because we felt that they were very unfairly advertising the book and attributing to it a lot of characteristics that we did not think it possessed.

We saw the advertising of the original edition that Robert McBride & Company published and we approved it, and had offered to us all advertising matter in conjunction with the book. Then later this Herald Publishing Company, and several other publishing companies, advertised in a manner that we distinctly did not approve, the reprint edition. 3897

Finally as a result of our threatening to sue them we arrived at an agreement with Mr. Feldman, of the Harlem Book



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3898

Company, who were the wholesalers of this popular edition, that he would control the distribution of the book, confine it only to reputable book stores and department stores, and not allow any advertising that we did not have a chance to see and specifically approve. That has been in effect for about three months, I would say.

I recall recently having read for our approval an advertisement to be published in the Hartford "Courant." I would say about a month ago.

3899

This and many other circulars and advertisements appeared in the interim, some of which we had called to our attention and many of which we may not have seen, but those that we did see we so vigorously disapproved of that we had to make legal representations to these people.

Q. Do you know the Herald Publishing Company is the concern that publishes a good many sex books, books that are questionable? A. I don't know that of my own knowledge, but the manner of presentation of this book by many of these publishers, Herald Publishing Company and two or three others, that were apparently purchasers of lots of this edition, was contrary to our own ideas of how a book of this character could properly be advertised, and we went after them on that ground.

3900

I don't know what else they may publish. We didn't like the way they handled this.

Q. Just how didn't you like it, Mr. Gingrich? Did you think they misrepresented the contents of the book or they played up the sexy features of it, or what? A. Yes. The book was a very good cross-section from a literary standpoint of some of the most representative writings in Esquire for the period of its inception up to the time of publication.

It had many stories and articles of a most serious nature.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

It had in it very few—relatively out of the entire book as a whole—light and trivial pieces, but their manner of exploitation would have given the reader the idea that it was made up of that kind of thing almost entirely, and that it was a sexy book. It was not a sexy book as a whole.

3901

We felt they were misrepresenting it to a point of nearly approaching fraud.

Q. Will you look at the description of the stories in this book on the back of that circular and tell me whether they present a true representation of what is in those stories? A. To the best of my recollection, this is a full list, yes. I don't recall anything that was in it that wasn't in this list.

Q. I see. If Esquire did not enjoy a reputation of containing risque and racy matter, Mr. Gingrich, can you understand why that company or any other companies which you have mentioned here should get out circular matter of that sort respecting excerpts from Esquire? A. I didn't follow the first part of your question, Mr. Hassell.

3902

Will you read it back?

Q. I believe you testified that Esquire does not enjoy the reputation of being risque and I am wondering what you would like to say about this and similar companies getting out circulars advertising the contents of Esquire in this manner? A. We disapproved of it—

Q. You disapproved of it, yes. A. —so heartily that we felt obliged to take action against them.

3903

Q. But nevertheless those circulars were gotten out advertising the "Bedside Esquire"? A. Advertising it most unfairly, highpointing isolated passages, and trying to cast over the book as a whole the suggestion that everything in there was comparable or was other and similar related matter which, of course, was an unfair characterization of the book.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3904

The book stands and speaks for itself very well. It is a very fine collection of very splendid writings of some very splendid authors of our time.

The list of contents in this circular does, in that respect at least, fairly represent the book.

The whole manner of presentation of the book is what we objected to and we are not in any way ashamed of nor do we disapprove the contents of the book, but we felt that the manner of hawking it about was decidedly a misrepresentation.

3905

Mr. Hassell: I offer that circular as the next Post Office exhibit number.

(The circular referred to was marked for identification as Post Office Exhibit No. 30.)

Mr. Bromley: Objected to as immaterial.

Chairman Myers: Well, I think it is immaterial principally, but it explains in a way what the witness has testified to, that he objected to it and thought that it was a fraud.

3906

Mr. Hassell: I submit it has another connotation, too, I believe, Mr. Chairman. We have gone rather far afield and gone into the distribution of Esquire in order to establish its reputation and standing as decent literature, and I think this has a very distinct bearing on that, if you are going to take into consideration those other matters.

Chairman Myers: Well, I think, generally speaking, that is correct, but the thought I had in mind was that that should be proved by another witness than this one.

It is admitted, however.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

(The circular heretofore marked for identification  
 "Post Office Exhibit No. 30," was received in 3907  
 evidence.)

*By Mr. Hassell:*

Q. Mr. Gingrich, I believe you said with respect to this article "Many Wives Too Many," you recall that article in one of these issues here, that is Dr. Joad's six wives article, that you didn't think this had very great literary value but it was selected for inclusion in the magazine as an article that would appeal to the largest number of readers.

Now, is it your thought that the general run of readers of Esquire are interested in exploring the experiences of a man who had had six wives on his hands to entertain throughout the day and night? A. Oh, I think that is a very unfair way of asking that question, Mr. Hassell. That article speaks very well for itself. It is a humorous debunking of a proposal solemnly made by a distinguished English philosopher. It takes the homespun approach to it of the American family man, explaining the trouble he has with one wife to keep happy and then projecting what would happen if he had six. 3908

Now, if you call that exploring the experiences of a man who has six wives, I simply couldn't agree with your characterization of the article; that is all. 3909

Q. I just wondered what interest that would have to the average ordinary reader of Esquire. A. I think it is very interesting. He would find recognition value in it. As a married man I read it and got extreme enjoyment out of it, and also got a chuckle out of it as a man who has one wife, and the article has recognition value. It is the most homely sort of American humor; its moral point and moral under-

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3910 tone is certainly an obvious one, that here is a man joking on the obvious impracticality of the proposal made by Professor Joad.

Q. Well, you think the article is purely humorous? A. Oh, it certainly takes full advantage of every humorous implication possible in Dr. Joad's proposal. It seems to me in the whole tone of the article, and the article's view, it is distinctly that of a humorist.

Q. Now, you said the article, or the story—I believe you said it was an article—the “Unsinkable Sailor,” by H. B. Lawrenson, was actually written by a woman? A. That is right.

3911 Q. Helen B. Lawrenson? A. That is right, Helen Brown Lawrenson.

Q. Why wasn't her name written out, Helen B. Lawrenson? A. Because we have had a policy from the very beginning not to use a feminine by-line in this magazine, because we have the standing subhead on the front cover, “Magazine for Men,” and we have deviated from that policy only once, to my recollection, in nine years. That was when we had an article written by a woman gift shopper on advice to men picking out gifts for women, and there it seemed to us to be justified to use her name as the full by-line because it was a subject on which a woman's advice should be sought. 3912 but without exception whenever an article is written by a woman we put in the initials only just to preserve that tradition or custom.

Q. You referred to this article as describing what I believe you called “picaresque,” a picaresque character. What do you mean by “picaresque”? A. Picaresque is a label you can apply to the activities of a rogue.

Q. Is that “p-e-e-k”? A. No, p-i-c-a-r-e-s-q-u-e.

Q. Oh, I see. A. Picaresque. I said it was both picturesque and picaresque.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

Q. Now, Mr. Gingrich, you started with the December, 1940, issue of Esquire, I believe, in connection with the alleged approval by the Solicitor of the Post Office Department of the publication? A. Yes, with the December, 1940, issue.

3913

Q. Why didn't you start with the November, 1940, issue? You know what happened to that, don't you? A. I don't recall anything happening to that.

Q. Don't you recall that issue was held to be non-mailable and you were warned through the Third Assistant Postmaster General through the Postmaster at Chicago that the continued carrying of non-mailable matter in your publication might result in revocation of your second class privilege? A. It is quite possible we learned those two things simultaneously. The word about objection being taken to the "Knight Before Christmas" feature in the December issue came so late in relation to that issue's preparation that my only recollection of the circumstances is that we received a wire or possibly word from the Post Office in Chicago—I don't recall how—but I know we did call up here to speak to the Solicitor and see what could be done about the page to which objection was made.

3914

I don't recall anything about November, but there quite possibly was at the very same time.

Q. Would you say that you did not receive a letter from the Postmaster in Chicago late in October, 1940, or early in November, 1940, informing you that he had been directed by the Third Assistant Postmaster General to warn you about carrying non-mailable matter in your publication? A. I wouldn't say that we had not received such a letter. I would simply say that in recalling the circumstances of how we began the policy of submitting dummies of each issue, I recall it began with the objection to the December, 1940, copy.

3915



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3916

I didn't recall there was any objection taken to the November issue. If there was, it was something that took place after the event and one in which we had no opportunity to make a change.

It is possible that such a letter was received at that time because it was about then, about November, 1940, as I recall, that our contact with the Solicitor's department began, the one that I explained this morning.

Q. I show you a copy of a letter from the Third Assistant Postmaster General to the Postmaster at Chicago, dated October 26, 1940. Of course, I can establish the mailing of this letter.

3917

I wonder if that refreshes your recollection with respect to having received a letter from the Postmaster at Chicago shortly after that time, on that subject? A. I imagine, Mr. Hassell, that my awareness of the objection to the December, 1940, issue probably preceded my acquaintance with this letter. This, I don't recall having been aware of at the time.

My recollection now is we were informed of the objection to the one specific feature in the December issue. I don't for a moment question the letter, no. Obviously we received it. But simply, as I recall it, I didn't know of or remember, that is, anything about November, but simply the objection to the December issue.

3918

Mr. Hassell: Now, I will be glad to produce Mr. Wentzel and have the file copy of this letter put in, if counsel wants it.

Mr. Bromley: If you assure me that is what it is, that is enough for me.

Mr. Hassell: I get that from the Third Assistant Postmaster as a letter having been sent out.

Mr. Bromley: Then I do not object to it on the ground of competency at all.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Chairman Myers: Is it marked for identification?

Mr. Hassell: Not yet.

3919

I wish to offer it in evidence.

Chairman Myers: It is received.

(The letter referred to was marked "Department's Exhibit No. 31," and received in evidence.)

Mr. Hassell: I may state, Counsel, I will be glad to produce Mr. Wentzel if you wish to ask any questions about this letter.

Mr. Bromley: I do not.

3920—

*By Mr. Hassell:*

Q. Mr. Gingrich, have you from time to time been advised of action being taken against the distribution of Esquire by local law enforcement officers? A. Not recently, but, say, as of about 1936 or thereabouts there were a number of such incidents, perhaps for about three years. At that time there was something of a wave of local activities of that kind.

I don't remember exactly, but we had some incidents of that character in New England, and I believe scattered points here and there over the country. I don't recall as of recent date having had anything of that sort brought to my attention.

3921

Q. Do you recall such action as that taken in Tennessee and in Texas? A. Yes, I think so. I don't remember specific places. My recollection is a general one, but there have been, yes, local newsstand drives from time to time.

Q. I call your attention to a letter addressed to the Solicitor of the Post Office Department by Mrs. Mary E. Allen,

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3922

Women's Bureau, Department of Public Safety, Knoxville, Tenn., dated April 30, 1936, to which she appends a list of publications about which she states she has received numerous complaints against them, among which is Esquire.

Do you recall having heard of any activities at that place and by that department with respect to Esquire? A. No, but that is the period to which I referred, 1936, so while I didn't recall the specific place I did remember in general that there had been similar instances over a couple of years there, 1936 and 1938.

3923

Mr. Hassell: I would like to offer that in evidence, not to prove anything except as a bearing on the reputation of the magazine.

(The document referred to was marked Department's Exhibit No. 32 for identification.)

Mr. Bromley: I object to it as irrelevant and immaterial.

Mr. Hassell: I submit—

3924

Chairman Myers: Are you willing to withdraw your objection to the tender made by the Respondent of the list of the National Organization of Decent Literature? If this is going to be admitted, that is going to be admitted too.

Mr. Hassell: This has a bearing in connection with the testimony of Mr. Croteau and the witness, Mr. Gingrich, as to the reputation of this magazine.

Chairman Myers: But it was offered in Mr. Croteau's testimony and that tender was made then and you objected to it and we ruled it out. Now, if you are offering this we will admit that one.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Mr. Hassell: I don't recall that that was tendered in Mr. Croteau's testimony.

3925

Chairman Myers: It was.

Mr. Hassell: Except the general statement was made.

Chairman Myers: No, the exhibit was tendered and it was excluded, but if you are willing to take that position on this, we will admit the exhibit that was tendered when Mr. Croteau testified.

Mr. Hassell: Well, of course, I think anything going back beyond the first issue involved here is immaterial, and I am offering this because a lot of that material went in, and I think by reason of the fact that it has gone in, it is up to me to show what I can about the reputation of the publication prior to that time.

3926

Chairman Myers: Well, of course, that would be admitted for the same reason if you desire to have it in. If you want it in we will admit the other.

Mr. Hassell: Well, I do not particularly want this one in. We have the testimony of the witness.

Chairman Myers: Which would you prefer?

Mr. Hassell: Well, leave this out. I don't see that it has very great bearing. I think this has more bearing than the other one which they offer.

3927

Mr. Bromley: Now, I move to strike out all of the testimony of this witness with respect to this 1936 complaint.

Chairman Myers: No, I think the testimony is proper as bearing upon the reputation.

The objection is overruled. It will not be admitted as such.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3928

(The document heretofore marked Department Exhibit No. 32 for identification was rejected.)

*By Mr. Hassell:*

Q. Now, Mr. Gingrich, do you recall ever receiving from the Solicitor of the Post Office Department in the latter part of 1941 a letter with respect to advertisements of so-called party records in Esquire? A. Yes.

3929

Q. In that connection I show you a copy of a letter dated November 22, 1941, addressed to you as editor of Esquire magazine by the Solicitor of the Post Office Department and what purports to be your reply, dated November 26, 1941. A. I recall my reply and the original letter.

Mr. Hassell: I offer those files as the next Government exhibit.

(The documents above referred to were marked Department Exhibit No. 33 for identification.)

Mr. Bromley: No objection.

Chairman Myers: It may be admitted.

3930

(The document heretofore marked Department Exhibit No. 33 for identification was received in evidence.)

Mr. Hassell: This letter from the Solicitor of the Post Office Department addressed to Mr. Gingrich, dated November 22, 1941, reads:

"Mr. Arnold Gingrich, Editor, Esquire Magazine,  
"919 North Michigan Avenue,  
Chicago, Illinois.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

My dear sir: The attention of this office has been called to several advertisements of Rabsons, 111 West 52 Street, New York, New York, and the Sherman Record Company, Chicago, Illinois, which appeared in the December issue of Esquire magazine offering for sale certain so-called 'party records'.

3931

A number of these records have been declared unavailable under the postal obscene statute, and advertisements thereof are likewise unavailable.

This notice is given you in order that advertisements of these records may be eliminated from future issues of your publication.

3932

Very truly yours,

Vincent Miles, Solicitor."

Mr. Gingrich's reply, dated April 26, 1941—

Mr. Bromley: November 26th.

Mr. Hassell: November 26th reads:

"Our January issue carries two of the advertisements of the party records offered by the Rabson's Music Shop, similar to those in the December issue. As you know, our issues are made up weeks beforehand and since we had no previous information, prior to your letter of November 22nd, as to the unavailability of these records, and the consequent unavailability of advertisements featuring them, there was no possibility of our taking any action on this matter with respect to the January issue.

3933

However, for February no advertisements of this character have to date been received and we are check-



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3934

ing with our advertising department now to preclude the possibility of our again carrying any advertisement featuring any unmailable matter."

*By Mr. Hassell:*

Q. Mr. Gingrich, do you recall that the November, 1937, issue of Esquire was held to be nonmailable by the Solicitor?

A. Quite possibly that is what I was referring to this morning when I said I recalled previous instances where isolated issues had been referred to afterwards as having been unmailable:

3935

Q. That you also learned that the July, 1937, issue of Esquire was held to be nonmailable? A. If those are the identifying dates of the various issues which I referred to that had been so declared, without recalling the dates, why that undoubtedly substantiates my testimony that there had been issues in that period declared nonmailable. I don't recall the exact dates of them; that is the only difference between us on that matter.

Q. In connection with "The Knight Before Christmas" matter appearing in the December, 1940, issue of Esquire, isn't it a fact that the Solicitor wrote you a letter on November 1, 1940, setting out the objected to textual matter in connection with those pictures and the text of those which he would not object to? A. He promised—

3936

Q. I show you a letter. A. He promised to follow that with a letter after I left to confirm the matter that we discussed on my visit here. Yes, this is the letter he said he would write.

Q. And you received that letter? A. Yes.

Mr. Hassell: I offer that as the next Government's Exhibit.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Mr. Bromley: No objection.

Chairman Myers: It may be admitted.

3937

(The document above referred to was marked Department Exhibit No. 34 and was received in evidence.)

Mr. Hassell: I may say in connection with this letter that the textual matter is written in poetic form continuously. You don't have to pause between each picture and you can get the sentiment much better than picking out excerpts from it.

3938

*By Mr. Hassell:*

Q. Mr. Gingrich, is it a fact that the matter submitted by you to make up the August, 1941, issue referred to as a dummy, was held to be unmailable by the Solicitor? Do you know that to be a fact? A. I know that objection was taken to one cartoon and a substitution made. As I recall it, Mr. Hassell, that objection came from you and I spoke to you on the telephone about a substitute for that particular cartoon.

You approved the substitution and I believe that I had a letter from you concerning the mailability of that issue after substitution of the cartoon for the one to which you took exception.

3939

Q. This matter you submitted down here in dummy form, was that in black and white or did the cartoons and drawings and all appear in colors? A. Some in color and some in black and white. Sometimes we have to have even a blue-print from the pages on which the color work had not been completed at the time the dummy was submitted. I believe

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3940

you still have the dummies as you retained them in your files, and examination of them would show that many of the features were in color and that many of the color features were not in color in the dummy, but were in black and white, rough proof form.

**Q.** After matter in a dummy was objected to, did you then prepare in final form and submit to the office of the Solicitor, the final completed copy as it would go out in each instance?

**A.** I believe so. The substitutions were always sent to the post office in Chicago.

3941

Any time there was exception taken to any feature in the issue we would send over to the post office in Chicago a before-and-after exhibit showing them which feature had been objected to and showing them what had been put in its place, so that the dummy was at all times brought up to date.

**Q.** But you didn't submit the completed form of the publication down here to get an approval on that, did you? **A.** Yes, I believe as a matter of routine two copies of the completed publication were always forwarded by the postmaster in Chicago to the Solicitor in Washington.

I believe that always was true.

3942

**Q.** You say it was forwarded by the postmaster? **A.** Yes to the office here.

**Q.** It was never done, Mr. Gingrich. **A.** That was my understanding of it.

**Q.** We never got them.

**Chairman Myers:** We will have to adjourn at three-ten for a few minutes, so suppose we adjourn for a regular recess right now and that will give you a chance to get your things together.

(Whereupon, a brief recess was taken.)

**Chairman Myers:** Go ahead, Mr. Hassell.

*Arnold Gingrich—for Respondent—Resumed—Cross.**By Mr. Hassell:*

3943

Q. Mr. Gingrich, referring to the August, 1941, Esquire dummy, I show you matter in black and white appearing on page 33 of this dummy. It appears to be a cartoon showing the sign "No swimming allowed", and the head of a young woman that looks like she is in the bushes and under which appears: "But, officer, we're not swimming."

Do you recall that to be the objectionable cartoon in this issue? A. Yes.

Q. That is in black and white, isn't it? A. Yes, that is one of the color forms in which the plates were not finished at the time the dummy was submitted. In all such pages the representation is in black and white.

3944

Q. In this dummy the Varga girls and most of the cartoons are in black and white, aren't they? A. I wouldn't say most without going through it. Quite a few of them as you see as you are leafing through it are in color.

Q. You say this one on page 53 that is in color? A. Yes.

Q. The Mountain Boys, that is in color? A. Yes.

Q. The one on page 134 is an advertisement? A. A fashion plate.

Q. A fashion plate. 123 and 124 are in color? A. Yes.

Q. Another fashion plate, 105 and 106 in color? A. Yes.

Q. That appearing on pages 87 and 86 in color? A. True.

3945

Q. And a cartoon at 65 you call that color? A. That is color.

Q. And the balance of the matter in this appears to be in black and white, doesn't it, Mr. Gingrich? A. Yes.

Q. And this generally speaking did not contain any advertising? A. No. The editorial content was always complete in the dummy. All carry-over material and all cartoons.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3946

Mr. Hassell: I would like to have that marked for identification in connection with this witness' testimony, this cartoon we have been talking about appearing on page 33.

(The cartoon above referred to was marked Department Exhibit No. 35 for identification.)

*By Mr. Hassell:*

Q. Do you know how that cartoon appeared in color as to the finished form? A. It didn't appear.

3947

Q. I see. A. We removed it and substituted another one.

Q. You didn't ever carry that cartoon? A. No, that never ran.

Q. With another gag line? A. No; I think that because at the time we suggested a change in the by-line from "we" to "I'm", and I discussed that with you, my recollection is on the telephone, discussing this cartoon with you and suggesting changing it to "I'm" and you said you would prefer to have it dropped entirely and I sent you subsequently a new cartoon to replace it.

Q. Showing a fat woman in a bathing costume? A. Yes.

3948

Mr. Bromley: Mr. Hassell, would you be willing to state now in connection with this issue that the whole issue was approved by you except one cartoon to which you have referred?

Mr. Hassell: The Post Office Department advised the postmaster that the publication might be accepted for mailing if that cartoon was left out. The Solicitor's office did not approve it.

Of course, as counsel has called attention heretofore, this is a criminal statute and the Post Office De-

*Arnold Gingrich—for Respondent—Resumed—Cross.*

partment does not approve matter and thereby give immunity to persons using the mails in violation of the statute, from criminal prosecution.

3949

Mr. Bromley: I should have said the only thing you held to be nonmailable in this issue was this cartoon.

Mr. Hassell: That is true, on the basis of this dummy, practically all of it that Mr. Gingrich has stated was in black and white. That particular cartoon, I think you will agree, we couldn't tell what it was going to look like in finished form.

Mr. Bromley: After you got it in color you didn't hold any of it to be nonmailable.

3950

Mr. Hassell: As a matter of fact, none of those publications in finished form came back to this office.

Mr. Bromley: They went through the mails and at no time did you ever hold any of it to be nonmailable. That is all I want the record to show.

Chairman Myers: Is there any objection to that?

Mr. Bromley: No, sir.

Chairman Myers: It may be admitted.

(The document heretofore marked Department Exhibit No. 35 for identification was received in evidence.)

3951

*By Mr. Hassell:*

Q. Mr. Gingrich, were you ever called to an interview by the United States Attorney or Assistant United States Attorney in Chicago with respect to the November, 1940, or December, 1940, issues? A. No.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3952 Q. Were you and Mr. Smart interviewed by a post office inspector with respect to those matters? A. We had a call from an inspector. My recollection is that it referred to those earlier issues that were held to be nonmailable—I believe you supplied the dates a while ago—1937, I believe you said it was—I don't recall such a visit in 1940.

Q. Did you receive a visit from two post office inspectors and were those inspectors Mr. Alford and Mr. V. V. Sugg? A. Yes, that sounds like the name, I think so.

3953 Q. As a matter of fact, another inspector called on you, Mr. Jerome Williamson, about December, 1940, about the December and November, 1940, issues? A. I don't recall an inspector's visit at that time. There were two inspectors, as I recall it, in the earlier visit, but I don't remember a visit from another inspector except that one.

3954 Q. You don't recall having told this inspector, that is, you and Mr. Smart, on December 3, 1940, that it was your desire and intention to comply with the postal laws with respect to matter under the postal obscenity statute, that you had conferred with the Solicitor on October 31, 1940, with respect to the mailability of the November and December, 1940, issues; and that the revision in the latter issue, December, 1940, was made at an expense of about \$2,000 as it was ready for mailing? A. No, I don't remember that unless Mr. Alfred Smart and I both saw the inspector on the previous occasion to which I referred.

Q. That was the earliest date. I am talking about December 3, 1940. A. Am I supposed to have been present in the interview referred to here, or was that an interview with Alfred Smart? It is just possible that it was, I just don't recall it. I do recall the other occasion where Alfred Smart and I both talked to the inspector, Sugg.

Q. And Alford, Inspector Alford? A. I don't remember

*Arnold Gingrich—for Respondent—Resumed—Cross.*

that name. Sugg is familiar to me. I remember there were two of them.

3955

Q. You recall, Mr. Gingrich, that the October, 1941, dummy was disapproved on account of the cartoon in there?

A. Possibly. There were, I believe, eight or nine issues out of the nineteen in which there was no substitution, but on the rest there were, so probably October, 1941, was one of those in which substitutions were made.

Q. I call your attention to page 74 of the dummy for October, 1941. That is the full page cartoon in black and white under which is the legend: "Heavens, would four Martinis do that?"

3956

Do you recall that that was one of the things objected to?

A. Yes, I do.

Mr. Hassell: I would like to have that marked.

(The document above referred to was marked Department's Exhibit No. 36 for identification.)

*By Mr. Hassell:*

Q. Mr. Gingrich, the November, 1941, issue contained a number of things, did it not, that were objected to by the office of the Solicitor? A. I believe so.

3957

Q. I show you the dummy for November and call your attention to the gate-fold which is opposite page 59, and a cartoon, this happens to be in color, on page 67, and a cartoon at the top of page 69, which is also in color. Is this a Varga girl? A. No, that is a Petty drawing.

Mr. Hassell: I would like to have those three items in this book marked.

The gate-fold, you say that is a Varga?

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3958

The Witness: A Petty.

Mr. Hassell: It is a Petty picture in black and white, opposite page 59.

(The document above referred to was marked Department Exhibit No. 37 for identification.)

Mr. Hassell: The color cartoon full page on page 67 with a legend underneath: "Is this a mistake or has the railroad added the finishing touch to their service?"

3959

(The document above referred to was marked Department Exhibit No. 38 for identification.)

Mr. Hassell: The cartoon in color appearing at the top of page 69 under which appears: "Now, are you convinced that I have no defense plans concealed on me, Major?"

(The document above referred to was marked Department Exhibit No. 39 for identification.)

3960

Mr. Bromley: Mr. Hassell, while we are on that subject, in the issue which I mentioned in evidence this morning, November, 1941, at page 58, I would like to show the Board the substitution of the Petty girl. The one you showed them is the one that did not run because you objected to it, and I would like to show them the one that was permitted to run.

Mr. Hassell: The one that actually ran is in color and the other one is in black and white.

Mr. Bromley: The point is that the second one was approved and the first one was not.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Mr. Hassell: We never approved this. We objected to it.

3961

Mr. Bromley: Let's ask the witness about it. You certainly don't make the charge that after you disapproved the thing we deliberately went and ran it, do you?

Mr. Hassell: I don't know. The Solicitor's office didn't get the finished copy and this is what we objected to.

Mr. Bromley: How do you explain it, Mr. Gingrich?

The Witness: Objection was made to this drawing on the ground that it was too revealing anatomically, as referring to the nates. By telephone I discussed it with Mr. Miles and explained that the drawing was finished as of the time that this objection was received but we would be able to run through on our plates and reduce the objection he had made to the picture at this point.

3962

On that ground he said, "All right, proceed, do what you can to it as long as your plate is made." That is what we did, and that is how we changed the plates from the form in which it was received here.

Mr. Cargill: Will you point out to me where it is changed?

3963

The Witness: Yes. You see the extremely defined line right here with the deep shadow showing there. That was all removed by running through the plate to avoid centering of interest as was present in the original drawing.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3964

*By Mr. Hassell:*

Q. The finished picture was not submitted here, was it, Mr. Gingrich? A. Only in the sense that we maintain that always the finished matter is submitted to you by the Postmaster in Chicago. That has been our understanding for years on end.

Q. In that connection perhaps we had better get the file.

3965

I call your attention to a letter dated September 4, 1941, signed by you, on the letterhead of Esquire. Is that related to this letter? A. That is right. This is the correspondence confirming the telephone conversation.

Mr. Hassell: Mark this.

(The document referred to was marked for identification "Department's Exhibit No. 40.")

*By Mr. Hassell:*

Q. Mr. Gingrich, I show you a copy of a telegram sent to the Postmaster in Chicago following the receipt of your letter. A. Yes.

3966

Q. Were you advised by the Postmaster in Chicago that this matter would be accepted as changed? A. We received the copy from the Postmaster of this telegram, yes.

Mr. Hassell: I offer this telegram from the Postmaster.

(The document referred to was marked for identification as Department's Exhibit No. 41.)

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Mr. Hassell: Now, I offer both the letter and the telegram in evidence.

3967

Chairman Myers: Any objection, Mr. Bromley?

Mr. Bromley: No objection.

Chairman Myers: They may be admitted.

(The documents heretofore marked for identification "Department's Exhibits Nos. 40 and 41," were received in evidence.)

Mr. Hassell: The letter reads, letterhead of Esquire, Arnold Gingrich, Editor, dated September 4, 1941, as follows—addressed to Mr. Miles, Solicitor, Post Office Department:

3968

"Pursuant to our two telephone conversations of today, I include proofs of cartoons which we have substituted for the cartoons now appearing on pages 67 and the upper half of 69, both of which were held objectionable by your department. As for the large gate-fold cartoon occupying pages 57 and 58 in the November issue, we are proceeding, as I outlined in our telephone conversation, to remove this drawing's objectionable features.

"The revision of the plates, of which we are now proceeding, will reduce the present accentuation of posterior lines to a point where they are no more prominent than the slight depression now noticeable in the backbone, in the drawing's present status. In view of these measures taken to obviate any objectionability from these pages, we trust that you will advise the Post Office here in Chicago, as you have in previous instances, that the issue is mailable as corrected.

3969

"I appreciate the difficulty of arriving at a hard



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3970

and fast set of rules in matters of this kind, particularly in view of the fact that such court decisions as are available for reference all date from another era, and I am inclined to believe that we will soon find it advisable to have recourse to a test case, for an attempt at clarification of the issue.

"Meanwhile, I would very much appreciate an opportunity to meet with you again in Washington for a 'refresher' session, for our guidance in making up future issues of Esquire.

3971

"I should also appreciate your letting me know whenever the pending conferences with the Postmaster General have been held, advising me of a date that would be convenient to you for this meeting.

"Cordially."

Forty-one is a copy of a telegram to the Postmaster in Chicago, which was sent collect—that is, for the publisher to pay for—reading:

"This office has been advised by publishers of Esquire that objectionable portions of advance copy November issue submitted by you have been corrected in view of which revised issue may be accepted for mailing.

3972

"Collect charges hereon from publishers."

Chairman Myers: Now, to keep the record straight, Mr. Hassell, you are just going to start to offer those other exhibits that were marked for identification. You didn't do that.

Mr. Hassell: I want to offer all these exhibits which have been marked to date.

Chairman Myers: Any objection?

Mr. Bromley: No objection.

Chairman Myers: They may be admitted.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

(The documents heretofore marked for identification "Department's Exhibits Nos. 36, 37, 38, and 39," were received in evidence.)

3973

*By Mr. Hassell:*

Q. Mr. Gingrich, that correspondence does not disclose that any finished copy of this gate-fold picture was ever submitted to this office, does it? A. No, it simply confirms the telephone conversation to which it refers.

Q. In other words, it was revised by telephone, wasn't it, by a telephone conversation? A. We were given an assurance by telephone that if we made the changes discussed, the issue would be considered acceptable for mailing, and I sent —oh, I believe in that instance, Mr. Hassell, and an examination of your files should show this, I did send copies of the before and after status of the drawing. I know we always did that with the Chicago Post Office. Every time there was a substitution we would, to keep their records clear, send them a copy of the cartoon or whatever it was to which objection had been made, marked "before" and another one marked "after" so they could check against the issues as mailed to see what had been objected to and what had been substituted.

3974

In the case of this one which was a gate-fold, having made the changes in the plates after this telephone conversation, I believe we sent that revised form of that both to Chicago and to this office. That is my recollection of that particular one.

3975

Q. Will you check on that because a diligent search of the files of this office does not show that any such thing was received. A. Yes, I will check the files.

Q. And if you find that that was done, will you put that in evidence? A. All right.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3976

Q. Mr. Gingrich, the dummy for the 1942 issue of Esquire was held objectionable, was it not, on account of the cartoon on page 54 thereof? I will show you the cartoon in black and white on page 54 of the January, 1942, issue. A. Yes, I recall that.

Q. That was the objected-to-cartoon, was it not? A. Yes.

Mr. Hassell: I offer this.

Mr. Bromley: No objection.

Chairman Myers: Admitted.

3977

(The cartoon referred to was marked "Department's Exhibit No. 42," and received in evidence.)

The Witness: Was your question that that was the only thing objected to, or one of the things objected to?

*By Mr. Hassell:*

Q. That is the thing objected to. A. There were changes in the verses accompanying the Varga calendar in that issue, a number of substitutions made in the verses.

3978

Q. I show you a telegram with respect to that, Mr. Gingrich, dated November 1, 1941. That telegram purports to have come from you. Was it your telegram? A. Yes, this is a telegram I sent.

Mr. Hassell: Will you mark this as Exhibit 43?

(The telegram was marked for identification as Department's Exhibit No. 43.)

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Mr. Hassell: This telegram reads:

3979

"Have removed both cartoons on page 54 of our January issue. No substitutions made because we have more advertising than we expected and had to take out one page of cartoons in any event. Trust you will advise Chicago Post Office in due course that objectionable cartoon has been removed. Just for the record, page 54 now carries cartoon which in your dummy previously occupied page 58."

I offer Government's Exhibits 42 and 43.

3980

(The documents heretofore marked for identification "Department's Exhibits Nos. 42 and 43," were received in evidence.)

*By Mr. Hassell:*

Q. Now, Mr. Gingrich, I show you matter appearing at page 12 and page 128 of the March, 1942, dummy of Esquire, and ask you to state whether those were objected to in this issue? A. I recall both of them as being material which was objected to, and for which substitutions were made.

Mr. Hassell: Will you mark these for identification.

3981

(The documents referred to were marked for identification as Department's Exhibits Nos. 44 and 45.)

The Witness: Mr. Hassell, I would like to clarify my identification on these in each instance as being

*Arnold Gingrich—~~for~~ Respondent—Resumed—Cross.*

3982

subject to anything else being in my file. That is both of these having been objected to and having been removed, but I don't know that that was all there was in the issue.

Mr. Hassell: I want to offer those in evidence.

Chairman Myers: Any objection?

Mr. Bromley: No objection.

Chairman Myers: They will be admitted.

(The documents heretofore marked for identification "Department's Exhibits Nos. 44 and 45," were received in evidence.)

3983

*By Mr. Hassell:*

Q. Mr. Gingrich, I call your attention to matters at pages 38, and 38 is a gate-fold, at the bottom of page 48, at the bottom of page 94, the top of page 102, the bottom of page 112, on page 135, and ask you to state whether those items were the items objected to in this April, 1942, issue of Esquire? A. Yes, I recognize them and identify them.

Mr. Hassell: Mark those.

3984

(Documents were thereupon marked for identification "Department's Exhibits 46, 47, 48, 49, 50, and 51.")

Mr. Hassell: I offer these in evidence as marked.

*By Mr. Hassell:*

Q. Is this the Varga or Petty? A. Varga.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Mr. Hassell: I understand the record fails to show that this Exhibit 43 was received. I want to offer them all up to this point. 3985

Mr. Bromley: No objection.

Chairman Myers: Exhibit 43 may be admitted. Also Exhibits 46 to 51, inclusive.

(The documents heretofore marked for identification "Department's Exhibits Nos. 46, 47, 48, 49, 50, and 51," were received in evidence.)

*By Mr. Hassell:*

Q. Mr. Gingrich, I believe you testified that the May, 1942, issue was the last one. A. No, my recollection is that July, 1942, was the last one. 3986

Q. I show you the May, 1942, dummy and call attention to pages 18, 28, 43, and at the top left of 44 of this issue and ask you to state whether it is in accordance with your recollection that these are the cartoons or matters that were objected to in this issue? A. Yes, I recall all of those that were identified.

Mr. Hassell: Will you mark this as Post Office Department's Exhibit 52 and this as 53 and this as 54 and this as 55? 3987

(The documents referred to were marked for identification as Department's Exhibits Nos. 52, 53, 54, and 55.)

Mr. Hassell: I offer these exhibits as marked.

Chairman Myers: Any objection?

Mr. Bromley: No objection.



*Arnold Gingrich—for Respondent—Resumed—Cross.*

3988

Chairman Myers: They may be admitted.

(The documents heretofore marked for identification "Department's Exhibits Nos. 52, 53, 54, and 55," were received in evidence.)

*By Mr. Hassell:*

Q. Now, Mr. Gingrich, I call your attention to matter appearing on pages 21 and 43 of the July dummy issue of Esquire, and ask you to state whether these were matters objected to by the solicitor in this dummy? A. Yes.

3989

Q. The last one of these—would you call that as a Sultan type cartoon, Mr. Gingrich? A. Yes, that is in the Sultan series.

Q. Do you recall whether you changed the gag line on that and still it was objectionable with the changed gag line? A. It is so identified in the dummy as having a new gag line. You will recall in referring to one of the previous issues where objection was taken, you will recognize the same drawing as having been submitted with another gag line in a previous issue.

3990

Mr. Hassell: Now, have these marked as Post Office Exhibits 56 and 57.

(The documents referred to were marked for identification as Department's Exhibits 56 and 57.)

Mr. Hassell: I offer these as Post Office Exhibits 56 and 57.

Chairman Myers: Any objection?

Mr. Bromley: No objection.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Chairman Myers: They may be admitted.

3991

(The documents heretofore marked for identification "Department's Exhibits Nos. 56 and 57," were received in evidence.)

*By Mr. Hassell:*

Q—I show you a copy of a letter addressed to you by the Solicitor of the Post Office Department on May 21, 1942, and ask you to state whether this is a letter that stopped the dummy business? A. Yes, that is the letter to which I referred.

3992

Mr. Hassell: I offer this as the next Post Office exhibit.

(The letter referred to was marked for identification as Department's Exhibit No. 58.)

Chairman Myers: Any objection?

Mr. Bromley: No objection.

Chairman Myers: Received.

(The letter heretofore marked for identification "Department's Exhibit No. 58," was received in evidence.)

3993

Mr. Hassell: This letter reads, addressed to Mr. Gingrich on May 21, 1942:

"For your information as a publisher using the United States mails, your attention is invited to the fact that the law does not require the Post Office Department to make a ruling as to the mailability of

*Arnold Gingrich—for Respondent—Resumed—Cross.*

3994

matter that is not in the mails or that has not been deposited for mailing. Since the Post Office Department cannot, by a ruling, relieve a mailer of responsibility for a violation of the postal statutes affecting obscenity, the Department declines to deal with the question of mailability of any matter which the sender feels may be in violation of such statutes, in advance of its actual deposit in the mails addressed for delivery to addressees.

3995

"If one harbors doubt as to the mailability of the material offered, because of the statutes relating to obscenity, a sense of decency and good morals should compel him to conclude that the material should not be sent through the mails.

"The dispatch by postmasters and postal employees of matters deposited in the mails constitutes no guarantee of its mailability under the postal obscenity statutes. The postal obscenity statutes in question are criminal laws, and one must, of course, accept full responsibility for depositing any matter in the mails which is in violation thereof."

3996

Mr. Bromley: Do you concede, Mr. Hassell, that that letter was sent to all publishers who had been submitting their magazines to this department, and not only Esquire?

Mr. Hassell: I will concede it was sent to a number of other publishers. I think it was the intention to send it to all publishers who were submitting their material in advance.

Mr. Bromley: That is what I said. It was sent to all publishers.

Mr. Hassell: I think it was the intention to send it, to so send it, but I couldn't say whether it was done or not.

*Arnold Gingrich—for Respondent—Resumed—Cross.*

Q. Mr. Gingrich, it is a fact that during this period in which you were submitting dummies here, there was a good deal of correspondence back and forth between you and this office, and the postmaster at Chicago, and you made a number of trips down here, didn't you? A. Yes, I think I came down three times, to the best of my recollection. Twice I came down with batches of cartoons that were not scheduled for publication, to get them reviewed in advance, came in to Mr. Gregory's office with them, and went over the batches of cartoons with him. That was done on two occasions.

3997

On a third occasion, after the receipt of this letter of May 21, 1942, I came again with another batch of cartoons, but Mr. Gregory explained that because the dummies were no longer to be reviewed he could no longer go over batches of cartoons, so they were not—

3998

Q. You came to me with those, didn't you, Mr. Gingrich? A. No, I think I came to Mr. Gregory with them and he said that they could not be examined because the Department was no longer in position to approve either cartoons or dummies.

Q. I told you that, but it doesn't make any difference. A. Well, on various trips I talked to various people. I do recall the discussion with you. Quite possibly it was that time—we were going over some of the material in the College Humor case. I remember your going over that with me. I also talked to Mr. O'Brien.

3999

Q. I gave you a copy of the press release in the College Humor case, didn't I? A. Yes, I think that is true. My point, however, is that I brought down three batches of

*Arnold Gingrich—for Respondent—Resumed—Cross.*

4000

cartoons, two of which were gone over by Mr. Gregory and one of which was not.

Q. Now, can you show us any Sultan type cartoons like those involved here in this cited material, that were approved by the Solicitor of the Post Office Department? A. Yes. In the issues from December, 1940, to July, 1942, I believe we have segregated—as a matter of fact, just for easy reference—all the Sultan cartoons which did appear during that period.

4001

Q. Do you think they were all of the same character as the cited material involved in this case? A. I would like to call attention to them on the basis of posing that as an open question. I don't think my opinion of them is particularly important.

4002

Since all the issues in this period are in evidence I would like to direct the Board's attention to page 46 of the March, 1941, issue, the Sultan cartoon reading: "I know I am two months late with these girls, but next time you try to get them past the British blockade;" to the Sultan cartoon of page 31 of the issue for April, 1941, the line reading: "Please don't haggle over the price right in front of her—do you want to give her an inferiority complex"; to the Sultan cartoon on page 62 of the issue for July, 1941, with the gag line reading: "Around here every day is father's day"; to the Sultan cartoon on page 35 of the issue for October, 1941, with the line reading: "I got the idea from an air line company"; to the Sultan cartoon on page 63 of the December, 1941, issue with the line reading: "I have a friend who can get one for me wholesale"; to the Sultan cartoon on page 46 of the issue for June, 1942, with the line reading: "Have you got that one in a size larger?"

Chairman Myers: These are all in those issues that you introduced?

Mr. Bromley: Yes.

*Arnold Gingrich—for Respondent—Resumed—Redirect.**By Mr. Hassell:*

4003

Q. Mr. Gingrich, did the postmaster at Chicago write you letters when matters on your dummy submitted through him were held to be objectionable by this office? A. They gave us either a phone call confirmed later by a letter or wrote us. I think as a matter of general practice whenever there was a question of a substitution to be made that they simply called us up and said that they had received a message from the Solicitor holding that pages so-and-so and so-and-so and so-and-so were objectionable. Then we immediately sent down, sometimes through them and sometimes direct, depending on how urgent the matter was on a question of press time, the substitutions. Then after the substitutions were approved we would again get a telephone call followed by a letter, so that as a matter of routine we always were advised by the postmaster at Chicago of what had transpired on each issue, whether it had had any objection taken to any of the pages or not.

4004

*Mr. Hassell:* That is all.*Redirect Examination by Mr. Bromley:*

Q. Will you look at this folder labeled "Varga 1941" and tell me whether this is composed of tear sheets from the 1941 issues of Esquire already in evidence showing the Vargas which were approved in that year by the Post Office Department? A. It seems not to be complete because I don't see one for April. April, 1941, is not here. It is complete except for that.

4005

Q. Here (handing the above mentioned article to the witness). A. With that included, that does represent the



*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4006 Vargas for the year 1941 which were in the issues submitted for ruling by the Post Office.

Q. Will you do that for 1942?

Mr. Bromley: I would like to show the Board these pictures rather than going through the magazines.

*By Mr. Bromley:*

4007 Q. Does the folder for 1942 contain the Varga girls that were approved for 1942 by the Post Office Department? A. Yes; that is complete starting with the calendar, continuing as far as the approval of the dummies went. That is through July 1942.

Q. Now, is it a fact, Mr. Gingrich, that all of the issues between October, 1940 and July, 1942, which have not been specifically referred to by Mr. Hassell in your cross examination, were all mailed without objection by the Post Office Department? A. That is a fact, yes.

4008 Q. And indeed in each of the instances to which no objection was made by the Post Office Department at all, you received a letter either from the Post Office Department or the postmaster at Chicago specifically telling you you could go ahead and mail? A. That is correct.

Mr. Bromley: Mr. Hassell, I will ask you to concede this, if it be true, that you have pointed out everything which was declared non-mailable by the Post Office Department in any issue from October, 1940 through July, 1942.

Mr. Hassell: With the exceptions of the few instances, counsel, where substitutions were considered bad and other substitutions were supplied.

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

Mr. Bromley: Well, would you concede, Mr. Hassell, that Esquire never published anything during this period in any of its issues to which the Post Office Department made objection?

4009

Mr. Hassell: I don't know as I could concede that. Of course, we have this Petty girl that some alleged change was made in the indentation in the nates. I never saw that before; that is the finished product, before this afternoon. It was not in the files of the office.

Now, just how that was changed, I don't know.

*By Mr. Bromley:*

4010

Q. I will ask you, Mr. Gingrich, did you ever publish in any issue submitted to the Post Office Department, any item to which any objection was taken by the Post Office Department? A. No, in none whatsoever.

Q. Is it a fact that in every instance where objection was made by the Post Office Department during this period, you agreed to eliminate and did eliminate the matter complained of? A. Yes.

Q. And was this Petty girl to which reference has been made, the only instance in which you made a change in the plate as distinguished from eliminating the matter altogether, that was complained of? A. Yes.

4011

Q. Is all the correspondence in evidence which relates to the change made in the plate of the Petty girl? A. I believe so. The letter confirming the telephone calls has been introduced in evidence and I have already called the Board's attention to the changes made in the plate in the December, 1940, issue.

That also was confirmed by letter. That correspondence is in evidence.

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4012 There is no other loose thread left hanging, to my knowledge, in the matter of substitutions. I have all of the substitutions, but, of course, since the issues are in evidence, they show what substitution was made for each of the complained of items.

I believe they are complete in that regard.

Q. In connection with Post Office Exhibit 30, which was an advertisement for "Bedside Esquire," you said you hired a lawyer to threaten these people who got out this advertisement with suit. A. We didn't hire a lawyer for that purpose. We referred it to lawyers who had handled other matters for us.

4013

Q. Who was that? A. Greenbaum, Wolf & Ernst.

Q. Is that the New York law firm of which Mr. Morris Ernst is a member? A. Yes, sir.

Q. Did they take it up at your instruction with the publishers and reach an agreement with them, or with their lawyers, which you had mentioned? A. Yes.

Q. Did that result in cessation of that type of advertisement for "Bedside Esquire"? A. Yes, with the proviso made that in the future advertising, advertising of any kind would be subject to our formal O. K.

4014

Since that agreement there has been only one advertisement come through which I referred to as being intended for the Hartford "Courant," which we did O. K. within about a month.

Q. You never had any contract or arrangement or dealings with the Herald Publishing Company or any of the other publishing companies who got out the ad to which you objected? A. None whatsoever.

Q. They got their rights to publish or distribute the book "Bedside Esquire" without your consent or knowledge, from the McBride Company with whom you made an original

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

arrangement to publish the book? A. We knew nothing of any such transaction until we saw some of those advertisements. We knew nothing of arrangements for distribution of the book whatsoever.

4015

Q. And your arrangement with the McBride Company, unfortunately, and perhaps due to an oversight, did not contain any prohibition against the McBride Company assigning their rights, did it? A. That is right. Upon examination of the contract to see what our rights were, I must confess that I had apparently overlooked a clause in the original contract, which they tell me is a standard clause concerning cheap editions,

4016

We had never thought of the possibility of there being a cheap edition of a book of this kind and we had made no proviso to lock that door.

Q. So that when McBride assigned to Herald and the others, and you found out about it, there was nothing you could do because McBride had the absolute right to assign? A. That was the position.

Q. How did you succeed in reaching an agreement with Herald and the others whereby they agreed to submit their advertisements to you for approval? A. We offered to buy up the plates, we offered to reimburse them for any expenses of books outstanding in stock, but, as I recall, the arrangement finally made was that they were not willing to give up this sale of such books as are now in existence, but have promised at the expiration of the year 1943, I believe, to discontinue the printing of any subsequent editions.

4017

They are, in other words, going to finish out the year and they will not continue distribution of the book beyond that time.

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4018 Q. Well, you got them to do that by paying them some money, didn't you? A. Well, I presume so, yes. We had made many offers of settlement on the matter to prevent the possibility of any more of these books getting into the hands of this type of publisher that were misrepresenting them.

Q. Don't you know that you paid them, as a matter of fact, \$10,000 in order to get their agreement? A. I don't recall what the actual monetary settlement finally was. I remember we had so many offers that were made and it has completely gone out of my mind what they did receive.

4019 Q. You know there was an ultimate monetary settlement whereby you paid them money? A. Oh, yes, that I would no doubt assume because the negotiations were so protracted and there were so many meetings held and we tried to arrive at an amicable settlement. We simply wanted the advertising stopped and wanted the possibility of this book being misrepresented ruled out in the future.

Q. So you got their agreement by paying them some sum of money? A. Yes, by paying them some sum of money and I have forgotten what the final settlement was.

4020 Q. In connection with Post Office Exhibit 29, being a letter of protest from somebody about the contents of your magazine, I show you a letter dated October 7, 1942, and ask you whether this is a letter from Frank M. Folsom? A. This is a photostatic reproduction of a letter we received from Frank M. Folsom, yes.

Mr. Bromley: Will you mark that for identification as the next Respondent's exhibit?

(The letter referred to was marked Respondent's Exhibit No. 120 for identification.)



*Arnold Gingrich—for Respondent—Resumed—Redirect.**By Mr. Bromley:*

4021

Q. Who is he? A. He is the assistant chief in charge of procurement of the Navy.

Mr. Bromley: I offer it in evidence.

Mr. Hassell: I would like to inquire whether Respondent's Exhibit 120 is offered in the form of a testimonial for Esquire.

Mr. Bromley: Well, you opened the door by complaining about us. Now I want to show that we get many more letters of approval than we do complaints.

4022

Chairman Myers: It may be admitted.

(Respondent's Exhibit No. 120, previously marked for identification, was received in evidence.)

Mr. Cargill: How many such letters do you intend to put in, Mr. Bromley?

Mr. Bromley: Well, I guess we get many, many hundreds.

Mr. Harding: Thousands.

Mr. Bromley: Thousands. I have selected perhaps a dozen.

4023

Mr. Hassell: As I recall, the complaint was from the Knoxville Women's Bureau, which I offered in connection with this testimony. That is the only contrary testimony I recall putting in.

Chairman Myers: As I understand it, this is directed to the matter of reputation of the magazine; is that the purpose?

Mr. Bromley: Yes.



*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4024

Mr. Hassell: That was the purpose of the other matter. Now I have some material like it in our files. If you want to go into that, why, we will have to put all these files in. I object to it.

Mr. Bromley: The letter to which I had reference was Post Office Exhibit No. 29. Letter of October 2, 1943, from Cambridge Glass War Service Committee, which I understood was received in evidence.

Mr. Hassell: That was about the Esky Buy Products.

4025

Chairman Myers: Yes; that is correct.

Mr. Bromley: Then there was a statement by Adolph Menjou which you read into evidence.

Mr. Hassell: That was with respect to how service men going into battle and about to die would not be interested in dirty stories.

Chairman Myers: I did not get that as a matter of reputation of the magazine.

Mr. Hassell: It did not mention Esquire.

Chairman Myers: Why don't you pick out about three of the characteristic ones and put those in for the purpose of saving the records? Mr. Hassell can pick out what he wants on his side.

4026

Mr. Bromley: You mean limit each side to three of these?

Chairman Myers: Yes.

Mr. Cargill: Mr. Bromley, do you think that three is a reasonable number?

Mr. Bromley: Well, I think together with testimony from Mr. Gingrich as to how many similar letters of approval he has received, three is all right.

Mark this for identification.

*Arnold Gingrich— for Respondent—Resumed—Redirect.*

(The document referred to was marked Respondent's Exhibit No. 121 for identification.)

4027

Q. Respondent's Exhibit 121 for identification is a letter dated October 14, 1943, enclosing a petition on behalf of the Varga girls from West Lafayette, Indiana, signed by members of the armed forces. Did you receive that letter and petition? A. I did.

Q. Have you received any other petitions from soldiers or anybody else, encouraging the Varga girl or the magazine? A. We have had many letters which were signed by group signatures, sometimes extending into a considerable number of signatures on one letter. I don't recall another petition of this nature.

4028

Mr. Bromley: I offer Exhibit 121 for identification in evidence.

The Witness: We have received copies of petitions sent to the Postmaster, just a copy to us, that were from ships in the fleet. I believe there were two such instances where we received copies.

Mr. Hassell: May I ask the witness about this?

Mr. Bromley: Yes.

Mr. Hassell: This document or petition was solicited for use in this hearing, wasn't it?

4029

The Witness: They wrote in and offered to take up a petition if we would send them the drawings in question. We said certainly we would and sent them to them and they made the investigation, with the resultant petition that is there offered.

The original, however, offer for the petition was volunteered upon hearing about this matter. We accepted the offer and the petition was then sent to us.

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4030

Mr. Hassell: I would not object to this if I can put in the same number.

Chairman Myers: If it relates to this hearing, I don't think it ought to go in myself. But I think you can put in the same number of general character as they have. If that is something that relates to this hearing, I don't think it should be received in evidence.

Mr. Bromley: Well, Exhibit 29, which was received in evidence did relate to this hearing and to our magazine.

4031

Chairman Myers: This is one of the three?

Mr. Bromley: Petitions, yes.

Chairman Myers: In the light of that, it may be admitted.

(Respondent's Exhibit 121, previously marked for identification, was received in evidence.)

Mr. Bromley: Exhibit 121 is a letter and dated October 14, 1943, signed by Leonard Gordon, sergeant, at West Lafayette, Indiana. It reads:

4032

"Enclosed please find the petition on behalf of the Varga girl. My room mate, Mike Winkler, and I were kept by the pressure of other work from getting the petition completed sooner. We sincerely hope that it will be of some help for your hearing on the 19th.

"A poll among the service men here would reveal 90 percent of the men strongly in favor of 'Esquire' as it has been, less than 10 percent indifferent, an almost non-existent fraction in sympathy with the move to withdraw your mailing rights.

"So, from all the boys, the best of luck,

Leonard Gordon."

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

Then, a signed petition with the typewritten heading: "We, the undersigned, members of the armed forces, note with alarm any attempt to censor the contents, both in text and illustration, of 'Esquire,' on the alleged grounds of pruriency, particularly where it is further alleged that the magazine has deleteriously affected the morals of service men. In no case do we, constant readers of the magazine, feel that we, or any other service men, have suffered in any way by reading 'Esquire.' On the contrary, we have always thoroughly enjoyed it and to the extent that any magazine can contribute to the service men's enjoyment at their leisure, and thereby, to their morale, 'Esquire'—Varga girls, Campbell cartoons, fiction and everything else—has done so. We therefore earnestly petition that 'Esquire's' mailing privileges not be withdrawn."

4033

And, there are seven pages of signatures.

And, I offer Exhibit 122 for identification in evidence.

4034

Mr. Hassell: No objection, if I can offer three similar matters.

Mr. Bromley: This is a letter from Army Air Base, Williams Field, Higley, Arizona. It is signed by Robert H. Ebenreiter and reads:

4035

"Dear Mr. Varga:

"I am writing this letter for 250 hard-working, high flying Aviation Cadets who are to graduate, commissioned, and off on their way to sky action in the far corners of the earth this forthcoming February 3d.

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4036

"We have been plugging, flying and studying together for seven long months, and are now almost at the end of the trail where we will receive our Wings and Commission! As is customary, we are publishing a classbook which is going to serve as a resume of our cadet days.

4037

"Other classes before us have put out books like this, but they have been only nominally impressive. We are determined to supersede any of their efforts and produce the finest classbook ever turned out by any aviation cadet class at any Army Flying School in the United States!

"That is why we are turning to YOU at this time.

"Your drawings have been great attractions for all of us lads. I know for sure that if we could include some of them in our book we will have taken a major step forward in reaching our objective of producing the best flying school classbook ever seen on the nation's training fields.

4038

"Therefore, we would like to make a bid for one of your shapely lovelies, enticingly clad in a very thin aviatrix's uniform, which would do the trick just beautifully. Our class is known as the 'Class of '43-B.' An effective angle would be to have your lovely damsel giving her best wishes to the boys of '43-B. Whether you want to have her on a plane or not is all up to you. In case you do, make it on a plane similar to the one I am enclosing inasmuch as this is the one in which we have done all of our training. You will note that this is a two-engine ship. However, remember that if you do not wish to use a plane in the drawing it is entirely OK with us. Matter of fact is, if you would like to submit



*Arnold Gingrich—for Respondent—Resumed—Redirect.*

several drawings, we surely would appreciate them.

"Also, please pen your personal best wishes on the drawing, because a word from you in our book would mean as much to us lads as the drawing itself.

4039

"The size of the page we are using is 8 by 11, if that information would be of assistance to you. We want to devote one full page to your drawing.

"And, as usual, prompt dispatch is necessary. Our deadline is set for January 15.

"Could you meet this deadline and honor us with one or more of your famous girl drawings? I can assure you that the appreciation of everyone of us flying cadets will know no bounds for your contribution!

4040

"Loyally yours,

"Robert H. Ebenreiter.

"P. S."

Important: I almost forgot to mention that these drawings must be in black and white inasmuch as our budget doesn't warrant colored drawings."

I offer in evidence Exhibits 121 and 122 for identification.

4041

Chairman Myers: That constitutes your three, does it?

Mr. Bromley: I will offer in evidence Exhibit 123, which—

Chairman Myers: Did Varga send one of the drawings?

Mr. Bromley: He did and it was used in the cadet book.



*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4042

The Witness: To my knowledge he has never turned down a request from service men. They come in such increasing numbers and he has filled them to a point to where we have been worried as to whether we would get our own work done.

Mr. Bromley: This letter is from the Army Air Base, Ephrata, Washington, and reads:

"Dear Esky:

4043

"Your magazine should receive the Army-Navy 'E' for efficiency. Efficiency at keeping up morale.

"In my book, the Varga drawings and the Hurrell photos are the favorites. The Henry Waxman and William Ritter photos are another dead heat for second. Stage door Esquire is third by a whisker with the Esquire Canteen fourth. The entry of John Falter and Paul Gallico are pushing the leaders very hard and may even win out. As far as magazines go, 'Esquire' is so far in front that there doesn't appear to be any second in the race.

4044

"Not being a literary sort of a fellow, I am not going to attempt to rate the writers. George Jean Nathan, William Lyon Phelps and Gilbert Seldes are my favorites.

"Incidentally, don't waste time sending the enclosed order. My morale needs another boost.

"So long, Esky. Sherman was wrong only because he didn't have 'Esquire' to look through.

"One who hopes you will never change."

That is signed "Corporal John Green, with his address.

*Arnold Gingrich—for Respondent—Resumed—Redirect.**By Mr. Bromley:*

4045

Q. Now, are these letters, the last two I have read, one in 1942 and one in 1943, typical of other letters that you have received? A. I would say so, yes.

Q. And the other letters generally run into what figures? A. Well, it would be into the thousands surely. There is never a day that goes by that the mail folder does not cross my desk with at least 25 to 30 letters from service men, and then in addition to that, I get the blue sheets from the subscription department, enclosing comments that were sent in with the subscription correspondence. Also, we have had a great deal of V mail as of the last few months since the V mail facilities have been available, so that the percentage of our mail from overseas is very great.

4046

Mr. Bromley: That is all.

Mr. Cargill: I would like to ask you one question.

The Witness: Yes.

Mr. Cargill: Can you tell me something about this man Gordon that got up the petition?

The Witness: No; other than he wrote in at the time that the Post Office citation had just been published, saying that the members of the flying group in West Lafayette, Indiana, would like very much to be of help in this matter. "If there is any value to you in having a poll or petition taken, we would like to do it; if you would send us the materials complained of."

4047

So I think, as I recall, we just answered it, stating that we would welcome it from them and sent the material. I did not meet him at all and I don't believe we had any conversation by phone.

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4048

Chairman Myers: What were the materials that you sent?

The Witness: The drawings, the Varga drawings for the year.

Chairman Myers: The eleven issues?

The Witness: Yes. At that time our only knowledge of the citation was confined to the original, I think, of 23 items, most of which, 17 I believe, out of that 23, were Vargas, so that they didn't get the very last thing that subsequently was included, but as of that moment, yes, we sent in everything we knew at that time.

4049

Mr. Cargill: Well, was this citation given publicity generally at the time it was issued?

The Witness: Yes. We knew nothing about it ourselves until after we had been called by any number of press services, and people who had heard it on the radio and were asking for information. I know my phone rang from Sunday noon until well on into Monday morning. One reporter of one press service after another asked me about this and I asked the first three of them to read me what they knew, because I had no knowledge of it, and from then on I was simply in the air until I got the citation.

4050

Mr. Hassell: I might say that the press release was issued with a deadline. We sent out four and some of the press services and one radio commentator put it out the day before. That was on Sunday. It should have gone out on Monday, the time we told them to send it out.

May I offer these three letters?

Chairman Myers: Yes.

Mr. Hassell: Mark these for identification, first.

*Arnold Gingrich—jcr Respondent—Resumed—Redirect.*

(The letters referred to were marked Department's Exhibits 59, 60 and 61 for identification.)

4051

Mr. Hassell: I picked out the last three in the file of recent date; one from an educator, one from a business firm, and another from a sailor on board a vessel.

I would like to offer in evidence the following letters:

Post Office Exhibit 59 being from W. M. Kethley, president of Mississippi Delta State Teachers College of Cleveland, Mississippi, who writes to the Postmaster General as follows:

4052

"Dear Sir:

"My attention has been called to a notice under a Washington date line that you have taken steps to restrict the free use of the mails to several of our current magazines and periodicals on account of lewd and indecent publications carried therein.

"I am writing to commend you for this action and to assure you of the support, the confidence, and esteem of many citizens in the United States. I express my personal appreciation of your stand and trust you will not deviate therefrom.

4053

"Very truly yours."

No. 60 is from L. J. Schott Company, signed by L. J. Schott, of Akron, Ohio. This is addressed to the Post Office Department, Legal Division, under date of October 23, 1943, and reads as follows:

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

4054

"Gentlemen:

"We write in connection with the denial of mailing privilege to 'Esquire Magazine,' and in which case a hearing is now going on.

"We have been surprised in the past that this magazine has been permitted to be mailed, and it seems that they must have had some special privileges.

4055

"It is undoubtedly one of the most obscene and shameful magazines on the newsstands, and in our opinion the move to shut off mailing privileges should be pushed to its logical conclusion."

No. 61 is from Russell L. Sink, an air mail letter dated October 28, 1943, and is addressed to me. It reads:

"Dear Sir:

"Am with you one hundred percent in keeping the over-worked mail clerks from delivering all the filthy mags or even a part of them to the public.

4056

"There must be a few Christians left and now is the time for them to come forward in behalf of our young peoples.

"The bible has plenty to say about such filthy stuff.

"After reading some of the testimonies of the leaders of our young people, it is no wonder they are delinquent."

That is all.

I offer these three letters in evidence.

Chairman Myers: Any objection?

*Arnold Gingrich—for Respondent—Resumed—Redirect.*

**Mr. Bromley:** No.

**Chairman Myers:** They are received.

4057

(The letters referred to, previously marked for identification, were received in evidence as Department's Exhibits 59, 60, and 61.)

**Chairman Myers:** Have you any further witnesses, Mr. Bromley?

**Mr. Bromley:** Two.

**Chairman Myers:** We will resume in the morning at 9:30.

4058

(Whereupon, at 5:15 p. m., the hearing was in recess until 9:30 a.m., Tuesday, November 2, 1943.)

4059



## HEARING OF NOVEMBER 2, 1943.

4060

## HEARING RESUMED.

Chairman Myers: Proceed, gentlemen.

FRED E. LUCHS a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Bromley:*

4061

Q. Reverend Luchs, will you give us your full name, please? A. Fred E. Luchs.

Q. And you live where, sir? A. Athens, Ohio.

Q. How long have you been in Athens, Ohio? A. Six years.

Q. And you are there the pastor of a Presbyterian Church, are you? A. Yes, sir.

Q. Will you give us the name of the church? A. The First Presbyterian Church.

Q. And it is in Columbus, Ohio, is it? A. Athens.

Q. Now, tell us something about the church, your parish.  
A. The parish itself is almost 700 members, but it is a church which deals with the students.

4062

Our student audience is about 80 percent of the congregation on a Sunday morning. There are 300 to 450 students every Sunday, these students not being all Presbyterian. They are all denominations, mostly Presbyterians, or some preference students who belong to no church.

Q. And from what part of the country are your students?  
A. All parts of the country and the 600 A. S. T. P. Army cadets.

*Fred E. Luchs—for Respondent—Direct.*

Q. What university is that? A. Ohio University, separate from Ohio State University, which is at Columbus.

4063

Q. How near the campus is your church? A. One block.

Q. Are you the only pastor of that church or do you have assistants or associates? A. I have a woman director of the student work.

Q. You are an ordained Presbyterian minister, are you? A. Yes, sir.

Q. For how long have you been such? A. Six years in the Presbyterian Church and six years in the Reformed Church, which is an allied body.

Q. Where did you receive your theological training? A. At the Eastern Theological Seminary at Lancaster, Pennsylvania, which is in a sense part of the Franklin Marshall College. I had a year at Harvard and two years graduate at the University of Chicago in the seminary divinity school and school of psychology.

4064

Q. Do you teach at Ohio University? A. I occasionally lecture on speech, journalism, and such.

Q. Now, have you ever served as exchange professor in foreign countries? A. As exchange minister in 1939. The itinerary was cut short by the war coming on, but I preached in England, Scotland and Germany—the American church in Berlin is the only church I preached in in Germany.

1065

Q. Did you conduct any studies abroad and, if so, where? A. I studied one other time at Palestine, Jerusalem, at the American School of Archeology, and in 1934 was on a study tour with a group of students and teachers which took in about a dozen or more countries of Europe.

Q. Have you been a contributor to periodicals on the subject of youth problems? A. Yes. Christian Herald, Christian Century, the Christian Century Pulpit, Social Frontier, Pennsylvania Farm Review, International Journal of Religious Education, and several others.

*Fred E. Luchs—for Respondent—Direct.*

4066

Q. Have you had any experience in conducting summer camps for young people? A. Yes. Four years in Pennsylvania with rural youth groups; north of Pittsburgh.

Q. Now, does that cover in general your training, experience, etc., Reverend? A. Yes. I worked with soldiers. I have been camp pastor at Fort Jackson last winter, and I am social adviser to the Army boys on our campus.

Q. And I suppose like many ministers during your various pastorates you have preached around the country in churches other than your own? A. Yes. I preached once in Washington at the New York Avenue church.

4067

Q. That is a Presbyterian church, is it? A. Yes, sir.

Q. Is it true that you have preached elsewhere? A. Yes. In Chicago, Milwaukee, and other smaller places.

Q. Now, there is before you on the table a collection of eleven issues of *Esquire* to which the Post Office Department has made objection in part. Have you examined the material in those eleven issues which we have called to your attention as having been complained of? A. I had examined them, I haven't read every word, but have looked at the criticisms made and have read those criticisms.

4068

Q. Based on your examination and your knowledge and experience, will you tell the Board whether you find anything in the material objected to that is in your opinion tending to corrupt morals of youth as you have come to know them in your contacts as a minister?

Mr. Hassell: Same objection.

Chairman Myers: Overruled. Will you answer, please?

The Witness: No, I have found nothing of that sort.

*Fred E. Luchs—for Respondent—Cross.**By Mr. Bromley:*

4069

Q. In your opinion, Reverend Luchs, would any of the objected to material have any tendency to lower the standards of right and wrong as regards the sexual relations in normal people generally? A. No.

Q. In your opinion, would any of the material which has been objected to have any tendency to stimulate the impure thoughts or acts among any class of normal adult human beings? A. I don't think so.

Q. Taking the matter which has been objected to, either singly or collectively, is it your opinion that they are obscene, lascivious, lewd, indecent or filthy? A. Neither of those terms you have described.

4070

Q. And, finally, in your opinion, would any of the material objected to have any harmful moral effect upon the normal average human being? A. No, I don't think so.

Mr. Bromley: That is all.

*Cross Examination by Mr. Hassell:*

Q. What is this average human being that you had in mind when you answered the question of counsel just put to you?

A. I was thinking of the normal student, a normal youth, as one who is not badly maladjusted, who is not in any sense a pervert; the average run-of-mill student on our campus.

4071

Q. Do you generally regard the family as the basis of our society, sir? A. I do.

Q. Do you regard jokes dealing flippantly with the sanctity of marriage the type of matter that is not calculated to have a debasing moral effect? A. No. Under humorous conditions I have felt that humor dulls the edge of that kind of obscenity or what we call stimulation. That under the im-

*Fred E. Luchs—for Respondent—Cross.*

4072

petus of humor the sex stimulation is almost nothing because of the humor which is attached.

Q. You think, then, a dirty joke that carries with it humor, is perfectly decent and proper? A. Not a dirty joke.

Q. Do you regard a joke that in effect puts a decent, reputable citizen who has standing in his community, in bed with a luscious blonde, as a dirty joke or as a perfectly decent joke? A. That could be both. I am thinking of a particular kind of joke now. From what I have seen in the case here I have seen nothing that would be obscene about that sort of thing.

4073

Q. Nothing that would be obscene or that would put a married man who has a reputation for decency and morality in his community, in bed with a luscious blonde whom he had never seen before? You say there would be nothing indecent about that, sir? A. Not in what I have found in this magazine.

Q. Will you answer the question? Would there be anything indecent in that sort of situation? A. A man being in bed with a blonde, yes, it would be indecent.

Q. Now, will you refer to page 94 of the November issue of Esquire, the first column, the bottom of the column, reading:

4074

"The corporal was going home on a furlough and was lucky enough to have a Pullman reservation."

He found the two luscious blondes in his berth and said: "I am deeply sorry, ladies, I'm a married man—a man of respect and standing in my community. I cannot afford to have a breath of scandal touch me. I am sorry—one of you girls will have to leave." A. That to me is a joke in reverse. That is, it must have come not realizing what he was saying, caught unawares.

First, I think it could not have happened, but he was caught unawares with what he was saying.



*Fred E. Luchs—for Respondent—Cross.*

Q. You didn't consider that this joke, if joke it may be called, appeared in a man's magazine intended for men, did you? A. This is the Army material, is it?

4075

Q. I am talking about Esquire magazine which purports to be a magazine for men. You understood that, didn't you? A. Yes.

Q. You didn't think that would lend any different color or aspect to the joke? A. Well, I don't think it would make any difference.

Q. You don't think that would make any difference? A. No.

Q. If this joke is not designed to lend or to introduce the thought that this respectable married man was about to get in bed with a luscious blonde whom he had never seen before, what is the purport of it? A. It is the surprise element that with two nothing happens, but he doesn't realize what he is saying.

4076

Q. Of course, the article or joke doesn't go on to say what happens, does it? A. No, it would not be a joke then.

Q. He says, "I am sorry, one of you girls will have to leave." You don't think there is any indecent import or connotation to be attached to that? A. No, the man being caught unawares just didn't realize what he was saying.

Q. Will you look at the 27th item on page 95, which is the last item on the second column:

4077

"The beautiful Army hostess, newly arrived in camp, thought she would take a nude dip in the clear blue lake", and she is surprised in the nude swimming in the lake by a rookie K. P. and the chilling water forces her to come out. She finds an old dishpan half buried in the mud and she holds it in front of her and then there follows this language:

"You wouldn't have such a smirk on your face if you knew what I'm thinking", she said.



*Fred E. Luchs—for Respondent—Cross.*

4078

"Oh, I know what you're thinking all right", said the K. P. "You're thinking that pan's got a bottom in it."

Now, Reverend, where do you think this person was holding the pan or concealing what part of her anatomy? A. Here (indicating).

Q. Her pubic area, is that right? A. Yes.

Q. That very definitely points to that, doesn't it? A. Yes.

4079

Q. Now, here we have in this joke a rookie K. P., a young soldier, recently in the Army, sees this woman coming out of the water in the nude and this dishpan serves to focus attention on one part of her anatomy, and he says: "I know what you're thinking all right; you think that pan's got a bottom in it".

What would you think of a picture, a photograph, which depicted such a scene as that of a young soldier viewing that portion of a nude woman's anatomy coming out of the water? Would you say that that would be indecent? A. I would say the same thing I would say of the story, that I don't like the taste of it; I just don't like its being there. It is a matter of taste.

Q. You don't think it is indecent, though? A. No, it is a matter of taste.

4080

Q. It is perfectly decent for a young apparently unmarried soldier to look at a nude woman or that part of a nude woman under such circumstances as this? Is that your position? A. It is a matter of taste.

Q. Well, I am asking you whether you think it is perfectly decent? A. Yes, but not of taste.

Q. What do you mean by taste, sir? Is it shocking to any moral sensibilities you may have, sir? A. Well, may I give an example?

Q. I would like you to explain what you mean by taste. You may do it in any way, fashion, or shape you wish. A.

*Fred E. Luchs—for Respondent—Cross.*

If I would go out here on the street and meet some important man, as our President, and would slap him on the back and say, "Hiya, Franklin", that would be bad taste. You don't call it indecent. 4081

Q. I see. How does that compare with this situation you have here? A. Well, it is a case of taste.

Q. Well, I am sorry. I don't get what you mean by taste. You refer to taste as respecting morals. A. It would be a relative term; To my taste it is bad, to somebody else's taste, probably not.

Q. You think it is good taste for an unmarried person to spy upon the private parts of a nude female when he is not wanted around? A. That is in bad taste, I would say. 4082

Q. But it is not contrary to morals or to decency, is it? A. No.

Q. Is that your position? A. That is right.

Q. That is correct, is it not? A. No.

Q. You know about the habits of nudists in nudist colonies, do you not? A. Slightly.

Q. Do you favor nudism? A. No. From what I have seen I think we are better off with clothes on. I think it is a fad of extremists.

Q. Do you think pictures of perfectly nude women or nude men and women together without being retouched, showing front views, are indecent or obscene? A. Perfectly nude people I would not favor. 4083

Q. You wouldn't favor them but you wouldn't think or consider them indecent or obscene, would you? A. Well now, in art work, of course, we see them, the Renaissance and Reformation Artists painted them. We don't think of that as indecent.

Q. I am speaking not with reference to art, but I am speaking of pictures, of perfectly nude men and women

*Fred E. Luchs—for Respondent—Cross.*

4084

such as you find in a nudist book or nudist magazine for general distribution. Do you think those are indecent or obscene? A. Yes, I do.

Q. But in this instance here where we have a picture conjured up by language as plainly as it can be conjured up, showing just that sort of a situation where a clothed young man is viewing those parts of a nude woman, you say that is not indecent? A. The word picture there is not strong enough. There is no play on that to produce that as such.

4085

Q. There is no what? A. There is no word picture powerful enough to present that as a nude picture. There is no dealing on it with all the sexual connotations.

Q. Well, we have here the clear statement that she is nude and she is surprised taking a bath in this clear blue lake by this rookie K. P., and when she can no longer stand the chilly water she comes ashore and discovers this dishpan with which she attempts to cover herself. In other words, her gestures are perfectly modest but the K. P. sees all and the joke is so designed as to prevent even the densest person from thinking about the part of the lady's anatomy that is the point of the joke. Isn't that true? A. But it is not strong enough to make a sex desire there. There is no perfect word picture there. There is no picture given in itself. It leaves too much to suggestion. You could go on and on.

4086

Q. I see. Turn to 31, the last item on column 3 of page 95. That reads:

"Pardon me, miss", said the sentry, "but it's against regulations to swim in this lake."

"Well, for heaven's sake", exclaimed the maiden, "why didn't you tell me before I undressed?"

"It ain't against regulations to undress, lady".

*Fred E. Luchs—for Respondent—Cross.*

• Don't we have the same situation in that alleged joke, except the particular portion of the lady's anatomy called attention to is not pointed out, as it were, by the joke. Would you say that is in bad taste? A. No, that one doesn't disturb me like the one up there.

Q. That one isn't in bad taste at all. Is that your statement, sir? A. No, as I read it first—and I have read it again—it hardly registered with me. It made no mark with me.

Q. Didn't you gather from that that the young lady had already undressed when the soldier spoke to her? A. Yes, yes.

Q. In other words, when she was spoken to she was in the nude, wasn't she? A. Yes.

Q. In front of this soldier or sentry. And that embodies no indecent connotations? A. Well, it just didn't appear that way to me as I read it.

Q. How does it appear now? A. I can't say that it is indecent.

Q. You can't see that it is even in bad taste? A. No, not in the sense the other one is.

Q. So, if you had a situation like that among the members of your flock, the young men, you would tell your young communicants that looking at a lady under those circumstances would be perfectly proper and decent, would you? A. I wouldn't advocate it, but it might come up.

Q. Now, look at the cartoon in column 95, the cartoon picture showing the soldiers camouflaged as trees, some peeping behind others, looking at two girls apparently nude in the water, and another one preparing to go in. Underneath: "You're sure there are no soldiers around here?"

Do you think that joke or whatever it may be called is entirely decent? A. It borders more on taste.

*Fred E. Luchs—for Respondent—Cross.*

4090

Q. You would put this joke in the same class as the item 27 about the dishpan? A. But not so strong, not in such bad taste as that one.

Q. Not in such bad taste. It is all right for soldiers to camouflage themselves and peep surreptitiously at young girls in the nude in bathing. Is that perfectly proper and decent? A. I haven't thought of the soldiers as stationing themselves there for that purpose, but just as being there and the girls came by.

It borders on accident rather than wilful intent or malintent.

4091

Q. But wouldn't it have been the decent thing for the soldiers to let the girls know before they started to undress that they were there? A. Well, knowing soldiers, I don't—

Q. You think it is perfectly proper for young, possibly young unmarried soldiers to do things of that sort? A. Well, what could have been done? They were there probably on some maneuvers and not to move.

Q. The soldiers very well could have made themselves known that they were there. If they couldn't move, they could have yelled to the girls that they were there, that there were soldiers there and they should not divest themselves of their clothes, couldn't they? A. Knowing soldiers as I do, I don't know.

4092

Q. In other words, you are fitting your moral code to the habits and customs of the soldiers you know rather than to some other doctrine? A. Well, looking at it realistically, soldiers are soldiers.

Q. And it is perfectly all right for them to peep at young women in the nude in bathing? A. Well, here is a situation by accident, it wasn't wilful design, it wasn't in a sense of creeping up on them. As I look at that joke. I don't think it is wilful design, it is just an accident that it happened.



*Fred E. Luchs—for Respondent—Cross.*

Q. Why do you think it was put in this magazine, sir, for men? A. Are these the Army stories? I believe they are.

4093

Q. What difference does it make? I am talking about the magazine Esquire, the magazine for men. A. Your question again is what, sir?

Q. I say, why should such a joke, or such jokes as I have read to you be put in a man's magazine? A. Because they are taken from men's magazines.

Q. You think that that is perfectly decent entertainment for men, do you? A. Well, these are taken from magazines which go into all our homes. I have seen them myself. Soldier boys send them to their homes. It is the sort of thing that happens, the same sort of thing, and this doesn't reach as many homes as these boys' papers do.

4094

Q. And suppose if that were so, would it make it any more decent or any less decent, the fact that they happened to be published in some other magazine? A. That in itself would make no difference.

Q. It would make no difference? A. No.

Q. Now, look at item 36 on page 95, fourth column, the next to the last item from the bottom, underneath the camouflaged trees joke:

"A beautiful young lady went for a swim in a secluded spot but forgot to take a towel. She had a swell swim and then came out on the bank and was allowing nature's balmy breezes to dry her when she heard a rustling in some nearby bushes." She asks who is there and there was a reply in a rather high-pitched voice and she asks "How old are you, Willie?" and the answer came quickly, 779, darn it."

4095

What is the connotation or implication from that joke. Reverend? A. Well, the man is aged, he is as aged as the story is.



*Fred E. Luchs—for Respondent—Cross.*

4096 Q. Why is he sorry that he is 79? A. At that age there is no thrill, probably.

Q. In other words, he is bemoaning the fact that he can't derive sexual delight from peeping at this girl behind the bushes, is that right? A. Well, of course, sexual delight, it could be artistic delight.

Q. A young potent, virile man peeps surreptitiously from behind bushes at a girl or girls in the nude, and you think that is artistic delight? A. I don't think a man necessarily would have sexual thoughts looking at a woman. A woman in the nude is a beautiful thing and he can look at her without stimulation.

4097 Q. You think the activities of the so-called peeping Toms are perfectly all right? A. Peeping Toms are perverts.

Q. Well, this man is alone, isn't he? Peeping at her from behind this bush? A. There is no sign that he is a peeping Tom, is there?

Q. You think that joke is perfectly decent? A. It is so old and it has been heard so often that I don't think anyone would get a kick out of it, having heard it so many times before.

4098 Q. Its antiquity lends decency to it? A. Its antiquity softens anything that we might think of as that sort of thing. I suppose almost every soldier has heard that in one form or another.

Q. You can conceive of young soldiers raised in ordinary respectable households who never heard of that joke, can't you, Reverend? A. Oh, it could be; it is one of the more or less widely known jokes, however.

Q. Will you refer to matter at pages 104 and 105 in the October issue of Esquire? Did you read this article or story which purports to relate to sports: "Luberta worked in a munitions plant; she needed a rest". A. Oh, yes.

Q. And she went on a vacation. A. Yes.

*Fred E. Luchs—for Respondent—Cross.*

Q. And on a vacation, when she undertakes to play tennis she had men who were taken with her physical charms, who sought to assist her, in the same way with golf, swimming, and so forth. She finally gets on the train and starts home and in the last column, page 105, beginning with the sixth paragraph from the bottom, it is stated on the train when she gave the conductor her ticket she growled: "I will slug the S. O. B. who says I am not doing this right."

4099

What does S. O. B. mean, Reverend? A. I think it means son-of-a-bitch.

Q. I see. Then it goes ahead:

4100

"The conductor gulped but said nothing to Luberta. To a brakeman he whispered, 'Keep an eye on that woman. She's nuts.'"

"When Luberta got home she spent the rest of her vacation sitting around the house or in movies or saloons. She married a 4-F guy and they were very congenial, having 21 progeny just as fast as Nature would allow.

"One day her husband said: 'Kids are handy as tax exemptions, but when I think of bills I feel faint.'"

"Luberta went to her spouse and patted him tenderly. 'I know, honey, but you don't realize how much fun something can be without so damn much advice.'"

4101

"She meant doing the children's washing, possibly."

Did you know what she meant, Reverend? A. By a stretch of the imagination, having children.

Q. Yes. The fun in having children, that is, the fun in having sexual intercourse. Isn't that it? A. I may be rather thick. I had to have that pointed out to me. I just didn't catch that story at all.

Q. We have four columns in this article, the sporting scene, and isn't it a fact that every word in that article

*Fred E. Luchs—for Respondent—Cross.*

4102

points to this climax or this conclusion? Without that it would be so much gibberish. Isn't that a fact? A. That is really what it meant to me. I didn't get that out of it.

Q. Now, do you say that is a perfectly decent thing to make sport about in a magazine of this sort? A. I can't see anything indecent about it. It is rather a listless article. I just don't see anything to it and I would never have finished reading to the end if it had been picked up in a magazine.

4103

Q. You say you didn't read to the end? A. If I had picked this up in a magazine in my home I would never have finished it. I don't see anything to it.

Q. If there is something to it as I have pointed out to you, you still think it is perfectly decent and proper? A. It takes too much imagination to figure out just what is meant there and I can't imagine any soldier reading that unless he is a sophisticate, and knowing what it means.

Q. Do you think that the use of the word "S. O. B." in this article is filthy or indecent? A. Usage, I think, has cleaned it up. At one time any reference to it—but especially these soldiers' diaries are so full of it and our trend of education—it is like so many things that were indecent a generation ago and are not indecent now.

4104

Q. In dealing with soldiers and young men, which is the more important, their amusement or their morals? A. Their morals.

Q. Now, will you look at page 38 of the September issue of Esquire, being what is known as a gate-fold, the Varga girl and "Military Secrets." Would you say that the clothing on this model serves to conceal any part of her anatomy. Reverend? A. The position does.

Q. Her position, but I am talking about her clothing?  
A. The clothing, nothing.

*Fred E. Luchs—[or] Respondent—Cross.*

Q. Her clothing emphasizes her nudity, doesn't it? A. Yes.

4105

Q. Did you read the verse? A. May I read it again? I read it once.

Q. "Military Secrets," and note the diary in her hand and note the expression on her face. She apparently has a boy friend in the Army and one in the Navy and one in the Marine Corps. Do you think in view of those facts, as I have pointed out, coupled with the nudity of the model, there is anything indecent in that picture? A. I can't see it.

Q. Do you think that there is anything in that picture that would be calculated to sexually stimulate young men?

4106

A. My interpretation on this one, like all these Varga girls, is an overplay of artistry, they are not realistic to me. Just as an idealistic boy has an idea of the wife he wants to marry and probably never does. This one measures up to that probably, but it is an overplay. There is something unreal here.

Q. Will you answer the question I asked?

Mr. Hassell: Will you read the question, please?

(Question read.)

The Witness: Not a normal young man, average.

4107

*By Mr. Hassell:*

Q. Do the young men in your parish, or those with whom you come in contact as a spiritual adviser, confide in you as to what sexually stimulates them in the form of pictures or printed matter? A. Just last Sunday morning I asked boys if this thing did stimulate them.

*Fred E. Luchs— for Respondent—Cross.*

4108

Q. You asked what boys? A. Boys at church.

Q. How many boys? A. Three boys.

Q. How old are they? A. They have been there a year or two, I know. One boy has been there three years.

Q. Are they in the Army? A. No. One was turned down, and the other two, I don't know.

Q. Do you think 4-F boys are perfectly average and normal? A. They can be. There are some 4-F's who were turned down for emotional rather than physical reasons.

4109

Q. And what did these boys tell you? A. I asked them about the magazine and its popularity. They told me it was less popular than certain other popular magazines. They knew one or two boys who read the articles, but nobody else. They read the jokes mainly.

Q. These jokes were read by these boys and the boys looked at the Varga girl pictures? A. Most of them. They said they felt only one or two ever read the articles.

Q. These boys were interested in the jokes and the Varga girl pictures? A. Yes.

Q. Why do you think they were interested in those only? A. Boys just don't have time for reading when they are in college. They don't read much about the regular context. But you can look at a picture or read a joke before meal time and it doesn't interfere with scholastic studies.

4110

Q. Have these boys ever told you just what reading matter or pictorial matter has excited them sexually? A. I don't recall their naming any particular things that stimulated them. They never mentioned anything of that nature.

Q. Would you admit, Reverend, that pictures and reading matter can sexually excite and stimulate? A. Yes.

Q. Mindful of the fact that Esquire is humorous, or supposed to be, and is representative of the down-to-earth plain language so that the ordinary person, undeveloped as to



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education and character, can read it and understand it, that it is rather profusely illustrated by cartoons and photographs, and that it readily comes into the hands of the immature, do you think that it meets the standard of morality society has the right to demand of publications reaching such readers? A. Yes; but I realize it will fall into the hands of people who should not get it, but, I mean, any magazine will do that; you can't keep these things out of everyone's hands.

4111

Q. You think there are certain persons that should not have this magazine, Reverend? A. Yes; I am thinking of one boy particularly who was in the Army and was sent home. I hadn't talked to the boy, but, knowing his case history, juvenile-delinquent case, he is the type of boy—I wouldn't want to put the magazine into his hands.

4112

Q. If it be a fact, Reverend, that 90 percent of all boys masturbate at one time or the other,—if that be a fact do you think this type of material should be placed in the hands of 90 percent of the boys? A. May I quote a reference? I had an experience—

Q. Yes. A. —I talked to one of my Sunday-school teachers who has had that magazine in his home; he has a girl that must be around the age of 12 and a boy around 10; and he claims they look into it and close it and never look at it again; it doesn't appeal to them.

4113

Q. They haven't reached puberty, however; is that right? You wouldn't expect it to have any effect on children who have not arrived at the age of puberty; would you? A. Well, there might be some curiosity.

Q. But the impressionable age would be after puberty; wouldn't it? A. More so, yes.

Q. The adolescent stage and the post-adolescent stage; isn't that true? A. Yes.



*Fred E. Luchs—for Respondent—Cross.*

4114 Q. Do you subscribe to Esquire? A. No. One of the co-eds bought it for a boy who stayed in our home, two years ago, and I looked at it at that time; I didn't read all of it, just interested in certain features.

Q. You don't urge your flock or people you are acquainted with to buy and read Esquire; do you? A. I urge them to buy religious papers; that is all.

Q. Do you have any children, Reverend? A. Yes.

Q. Adolescent children? A. No.

4115 Q. Isn't it a fact that things which appeals to prurience are contributing factors in the matter of the prevalence of sexual disorders, venereal disease, and so forth? A. May I have that question?

Mr. Hassell: Read the question.

(Question read.)

A. That is, obscene material helps to produce syphilitic people?

*By Mr. Hassell:*

4116 Q. Obscene material contributes to the so-called sexual disorders, venereal diseases of the various kinds? A. Yes. I have seen some pictures which I know would definitely stimulate and lead to that sort of thing.

Q. Well, isn't it a fact that anything which does contribute to prurience will aid in bringing about that result? A. That result? Meaning venereal disease?

Q. Meaning sexual disorders. In other words, promiscuity leads to sexual disorders. A. Promiscuity?

Q. Yes, in sexual matters. A. Yes.

Q. Which leads to sexual diseases? A. Yes.

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Q. And the prevalence of sexual diseases? A. Yes.

Q. So, anything that would tend to increase promiscuity, such as salacious material, would contribute to the prevalence of sexual disorders? A. Meaning, by disorders, diseases? 4117

Q. Yes. A. Yes; but, of course, probably not everyone who indulges becomes diseased.

Q. Reverend, have you ever attended a burlesque show? A. Yes.

Q. Did you see the "Star & Garter" show in New York? Did you read the review of Star & Garter show at pages 83 and 119 of the January issue of Esquire? A. Yes, sir—Not every word; I skipped over some. 4118

Q. You skipped some of them? A. Yes.

Q. Well, in the first column there, the first paragraph, about midway of the paragraph, it says:

"And merely as an incident Gypsy Rose Lee is the defendant against whose navel Clark finally blows a paper-tickler."

Do you think that is an indecent reference to part of a woman's anatomy? A. I don't like it.

Q. But you think it is entirely decent? A. Well, I would have to see the thing; I don't get enough of—I just don't like it.

Q. Now in the next paragraph, down toward the bottom: 4119

"Weaving and winding his frame around tall show girls, peering through his non-existent glasses into the bosoms he isn't tall enough to see unless he jumps"—

Do you see that? A. Beginning with "Weaving and winding"?

Q. Yes.

"Weaving and winding his frame around tall show girls, peering"—at the bosoms; and so forth. Do you think that

*Fred E. Luchs—for Respondent—Cross.*

4120

is an entirely decent statement or reference? A. I don't like it. It is a matter of taste.

Q. The next paragraph. It is stated:

"Burlesque patrons are single-minded, if that's the right word."

Do you know what that means? A. They are out for stimulus.

Q. Sexual stimulus; is that right? A. Yes.

Q. And, going on down toward the bottom of that column:

4121

"So, you have girls stripping to a riotous dance or you have girls stripping not to a dance, and since this is uptown stuff you have the odd spectacle of Gypsy Rose Lee stripping awkwardly and self-consciously, which may be a novelty but isn't very good fun. Certain little gestures as she fluffs the ruffles on her jacket are enticing but the major part of her strip she does from under the cover of a bouffant dress, working strings and letting petticoats drop—and down to the planted scream in the audience and the laughs Miss Lee manages every night after the scream—it is just this side of the simple, honest denudation she was capable of five years ago."

4122

Do you think that is a decent description to be contained in a magazine generally circulating throughout the United States? A. This is speaking of the article as a whole. It is more of a debunking article.

Q. Look down in the next paragraph. You will see at the center of that paragraph the beginning of the sentence:

"There is also a character from the night clubs who makes her breasts jiggle, and this is considered funny, but I didn't think so even at the night clubs, where her frankness was greater, her skill no more engaging. A stripper who does an orgiastic dance verges on the erotic."

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And before you read that, there is a sentence just before it:

4123

"In this particular show there is also a young, slender dancer named Leticia, who does a wonderful trick ballet dance—it is a trick because it is actually erotic, whereas so many of the hip grinds are not."

Do you think that is an advertisement through a review of an erotic show? A. That is only one part of the whole article; I think you have to finish the article to get the whole gist of it.

Q. I understand that, but isn't it a fact that such statements are calculated to induce persons who have not ever seen a burlesque show to go see this, persons who want to see an erotic show? A. I think it is the opposite; if a person really is seriously thinking of it it debunks that sort of thing.

4124

Q. Burlesque would not have to be debunked for you; would it, Reverend? A. I went to one and I didn't care for it.

Q. One time in your life you went to one and you didn't care for it— A. Yes.

Q.—and, so, you think the balance of humanity would probably do just as you did? A. No.

Q. You don't find anything indecent in that article? A. Well, taken as a whole, it debunks it.

4125

Q. You think that would discourage people from patronizing that show, which is a sell-out every night, as I understand it? A. Seldes is a good writer; I like some of the things he has written and I would have faith in it.

As a whole, he is debunking it, and, rather than taking one thought here and one thought there, the thought they would have after they read the whole thing was—

Q. You didn't read the whole article but you arrived at

*Fred E. Luchs—for Respondent—Cross.*

4126

the conclusion that Seldes was attempting to debunk burlesque by that article; is that right? A. Yes.

Q. You didn't obtain that impression by talking to counsel before coming here? A. They showed me the article.

Q. Did they tell you it was a debunking article? A. No; that is my term.

Q. And you got that without reading the whole article? A. I read through it, just glancing through it.

Q. Do you think that Esquire has the reputation of being a spicy, racy, sophisticated magazine for men? A. I have heard it referred to as sophisticated; that is the term I have heard referred to mostly.

4127

Q. And you think it has a reputation of being a sophisticated magazine? A. Yes.

Q. At page 10 of the August issue, midway of the column of that page, there is a paragraph headed "Considered Opinion", and it reads:

"In your May issue (this year, too!), page 93, article entitled 'Broadway for the Boys,' it is said: '20 percent don't, 20 percent do, and 60 percent might.'

4128

"While in no way representing the opinion of the Navy Department, it is the considered opinion of this patrol squadron that 20 percent don't, 20 percent do, and 60 percent don't get the opportunity. Now you guess which category we fall in!"

What do you think that "don't," "do", and "don't get the opportunity" refer to in this? A. Being on the water—

Q. Don't get the opportunity to be on the water? A. Being on the water, don't get the opportunity—I was thinking about being away from land.

Q. Don't get the opportunity? A. Well, having read the play—

Q. Don't have the opportunity to read the play? A.



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This is referring to Maxwell Anderson's play; isn't it?

Q. It says "Broadway for the Boys"; it is referring to an article about Broadway for the boys.

4129

But particularly this "20 percent don't, 20 percent do, and 60 percent don't get the opportunity"?

Mr. Bromley: "Broadway for the Boys" refers to the play, "The Eve of St. Mark", Mr. Hassell, as you well know.

Mr. Hassell: It refers to the article entitled "Broadway for the Boys".

*By Mr. Hassell:*

4130

Q. What does "do", "don't", and "don't get the opportunity" refer to in this article here now? A. Sexual intercourse. I happen to know that because I have read the play, but I would not have judged it from reading this letter here.

Q. What would you have thought it referred to from reading this? A. I don't think there is enough here to tell you what.

Q. You think it is a lot of nonsense? A. I suppose the boys themselves had in mind— But the reader— This is August— This is several issues back. I can't see where anyone would, if they had not read the play or had some other background—

4131

Q. Do you think you are perfectly competent to testify as an expert on obscenity, lewdness, lasciviousness, indecency, and so forth? A. No more than any other minister who deals with young people.

Q. You don't have any confession in the Presbyterian church; do you? A. I have kids who come to my home, my study, and tell me things that have happened.



*Fred E. Luchs—for Respondent—Cross.*

4132

Q. But you don't have any confessional such as they have in other churches? A. No.

Q. Is it an ordinary thing for young people in your congregation to come and confess to you their sexual peccadilloes and what induces them to commit them? A. I never remember anyone telling me what induces them; they just do. I don't recall anyone having said to me, "I did this because of" so and so and so and so; it is just a matter of losing their heads.

4133

Q. You don't recall anyone having told you what induced them to reach that state of mind? A. I don't recall anyone ever having told me.

Q. But you think you are competent to pass on matters which might be calculated, in the opinion of some, to induce such acts? A. Just one individual.

Q. In other words, you are stating your opinion and not anyone else's? A. That is right, at this moment.

Q. Everyone else is entitled to his own opinion on the subject? A. Yes.

4134

Q. Reverend, will you look at the March issue, page 49? What do you think a soldier, apparently a French soldier, in possibly the north-African desert, would be doing with a personable, well-formed, almost-nude native young woman given to him as a birthday present? A. This whole series of sultan-harem pictures seems so ludicrous to me, having visited that part of the country and—

Q. Who told you this—

Mr. Bromley: Let him finish; won't you, Mr. Hassell?

Mr. Hassell: I thought he had finished.

Mr. Bromley: He had not.

*Fred E. Luchs—for Respondent—Cross.*

A. I have seen women and their black attire from neck to toe, the market place, with its unsanitary conditions. It is ludicrous that anything like this could happen. It is anything but a sex stimulation to see these women because they are not beautiful and the whole environment is one of dirt.

4135

*By Mr. Hassell:*

Q. I see. So, you searched back in your prior experience to get a decent explanation for this? A. These have been here for some time and I have always had that view about them.

4136

Q. Do you think it is perfectly decent and proper to exhibit a thing of that sort, indicating that a slave-girl is being given for immoral purposes to a soldier? A. Well, just in the realm of the Jules Verne tales, it is so impossible.

Q. Who told you that this is one of a series of cartoons? Did counsel tell you that? A. No; I have seen them. This is a harem thing where the fat chap has the turban on his head; this is all in a series.

Q. You mean that it is a series that is featured in Esquire magazine regularly? A. Yes; over some years now.

Q. You have been following Esquire over a period of years? A. Well, two years ago, I think, I read maybe every issue, but I see it in the men's faculty club, at the dentist's, at the doctor's, and so forth.

4137

Chairman Myers: How many wives had King Solomon?

A. In the neighborhood of 1,000, they say.

Chairman Myers: That was almost a harem; wasn't it?

*Fred E. Luchs—for Respondent—Cross.*

*By Mr. Hassell:*

4138

Q. Will you look at page 65 of the September issue, the cartoon shown there?

This shows a man looking out of the open door; he has an apron on; the shapely milk-delivery maid; and the legend, underneath, "Come back later sweet; my wife hasn't left for the factory yet."

4139

Do you think that that cartoon, full page in color, contains any improper sexual connotation? A. No. I immediately thought of the fact that we are playing on the fact that women are in the factory now and the men are home; cooking the meals; the reverse of the old iceman joke—that the men are cooking the meals.

Q. The old iceman joke. You think that that was perfectly decent, for the wife to have sexual relations with the iceman in the absence of the husband? A. Well, I wouldn't approve of that; no.

Q. You would approve of a joke built in and around that fact; wouldn't you? A. Well, it necessarily would have to suggest that sort of thing.

I mean I would be against that sort of thing.

4140

Q. What would this joke suggest? A. I think of the women working in the factory and the men doing the house-keeping and the women working in the factories; a reversal of the thing.

Q. How about the line, "Come back later sweet; my wife hasn't left for the factory yet"? A. Well, it is stressing the modern trend of men being at home and women in the factory.

Q. Doesn't this cartoon deal flippantly with the sanctity of marriage? A. Well, I didn't think that it did.

Q. You didn't? A. No.

*Fred E. Luchs—for Respondent—Cross.*

Chairman Myers: We will take a recess for 10 minutes.

4141

(A short recess was taken.)

*By Mr. Hassell:*

Q. Will you refer to page 49 of the October issue of Esquire, the full-page color cartoon facing page 48? There we have a scene of a hefty young man in overalls seated on the couch; a woman, with rather oversized breasts, seated in his lap, with her arms around his neck; cocktail glasses and a cocktail shaker on the table in front; and what appears to be the irate husband, in street clothing, standing, glaring at them; under which appears, "Hello, dear; this is the gentleman who sells us our fuel oil."

4142

Do you think there is any indecent sexual connotation to be derived from that joke? A. No.

Q. Do you think it is perfectly proper for a wife to be caught in that predicament, with a man of that sort, and just having had drinks, intoxicating drinks? Do you think there is nothing inselcent at all about that? A. I don't like the taste of it but you have to keep it in its context.

When I think of the women in Athens now who almost bow before servant girls and the coal man in an effort to be nice to them; it is really the laborer-employer situation now in reverse that makes me think of it.

4143

You pointed out the breasts; I never noticed the breasts; I was thinking of the situation in that whole town of Athens, where the women are playing servants to the servants.

Q. Then you don't think this deals flippantly with the sanctity of the marriage relation? A. No; not as I hold the

*Fred E. Luchs—for Respondent—Cross.*

4144 sanctity of the marriage relationship; I don't think it does; I see it in its context as a modern industrial problem.

Q. You think modern industrial conditions condone acts implied by this cartoon? A. No; but it is an exaggerated way of showing that women are nicer now to laboring people than they were 10 years ago.

Q. You preach morals, do you, Reverend, in your congregation? A. Among other things.

Q. What are you being paid for coming here to testify, sir? A. Nothing.

4145 Q. Did you come here in your capacity of a witness for Esquire in furtherance of any moral program you have on now? A. Nothing that I am stressing in particular; no.

Q. You came here simply out of love for the magazine and the type of matter that is carried in it? A. Not love for this magazine in particular but just freedom of the press in general.

Q. You are here as a crusader for freedom of the press, as you state, for carrying matter of this sort? A. Not as a crusader.

Q. In what capacity do you appear here? A. Not as a crusader; just as one person who has been asked.

4146 Q. You are taking up your time—How many days have you devoted to this? A. I came yesterday morning and am leaving as soon as I can today.

Q. And how many days did you devote to it before you came here? A. I knew nothing of the case until Saturday afternoon, late.

Q. How did you happen to be contacted? A. Mr. Gingrich called me.

Q. Did you know Mr. Gingrich? A. I had met him once.



*Fred E. Luchs—for Respondent—Cross.*

Q. Where did you meet him? A. Chicago.

Q. In the Esquire place of business? A. No; in education. 4147

Q. In education? A. Yes.

Q. Where was that? A. At the Francis Parker School.

Q. Are you in any way connected with that school? A. No; my wife was, seven years ago.

Q. I see. So, through that connection Mr. Gingrich or counsel got in touch with you and asked you to come here and testify and try to save the second-class privilege for Esquire; is that right?

Mr. Bromley: I object to that statement. 4148

Chairman Myers: That is a characterization. Sustained.

*By Mr. Hassell:*

Q. You think this is the type of literature that Congress had in mind when it established a subsidy for second-class publications?

Mr. Bromley: I object to that as incompetent.

Chairman Myers: That is a question not in issue here; the objection is sustained.

4149

*By Mr. Hassell:*

Q. Do you think this magazine is originated and published for the dissemination of information of a public character relating to literature, the sciences, and the arts?

A. Yes, sir; to me, as it is written.

Q. And do you think that this part that is involved in this case is of such a character? A. Will you please explain what you mean by "such a character"?

*Fred E. Luchs—for Respondent—Cross.*

4150

Q. Is the matter that we have been discussing here, the matter that you were asked to examine by counsel, matter of the character I have just described; designed for the dissemination of information of a public character relating to sciences, literature, and the arts?

Mr. Bromley: The statute says "or" and not "and".

Mr. Hassell: All right; I accept the correction.

Mr. Bromley: There is nothing much else you can do but accept it.

*By Mr. Hassell:*

4151

Q. Do you think it is of such a character? A. Will you repeat those three again?

Mr. Hassell: Will you read the question?

(Question read.)

A. There is science, literature, and the arts; some, probably, wouldn't come under that.

*By Mr. Hassell:*

4152

Q. Do you think that this part of these issues of this magazine that are under examination here consists of matter originated and published for the dissemination of information of a public character or related to literature, the sciences, or the arts? A. I am afraid I just don't understand. Didn't I answer that in the first question? Just how is that different from the other question?

Q. I didn't hear you answer it; maybe you did. A. I believe it is for purposes of those three things you mentioned; that is part of it.

*Fred E. Luchs—for Respondent—Cross.*

Q. Dissemination of information of a public character?

A. Yes.

4153

Q. You think this type of joke, cartoon, and the Varga-girl pictures, and these articles referred to here are information of a public character? A. It could cover them specifically. Your term there is so broad that it could easily be in there. Public information—

Q. Would you put it under either of the others? A. I wouldn't put it under letters; it is not the highest kind of literature.

I would consider the Billy Phelps contributions as very good.

Q. You say that this particular matter that we are referring to here is literature? A. Well, it has articles in it; it depends on your definition of literature.

4154

Q. Do you think jokes such as we have referred to and cartoons such as we have referred to and the Varga-girl pictures which we have referred to are literature? A. No; I don't call that literature.

Q. Do you think that matter relates to the sciences? A. No.

Q. Or the arts? A. The pictures come under art.

Q. Did I hear you say that the Varga-girl pictures are art? A. It depends on your definition. I don't particularly care for them, but, to some people, yes.

4155

Q. The magazine doesn't carry them as art; does it? It has an art department but it doesn't list the Varga pictures under art. A. Well, I haven't examined the magazine with that in mind.

Q. Now if it had been indicated or— It is not claimed that the Varga girls are art; would that change your opinion?

A. I don't know if— State that again, please.

Q. I say, if it has been stated here that it, is not claimed

*Fred E. Luchs—for Respondent—Redirect*

4156 that the Varga-girl pictures are art would that change your opinion? A. You mean we could find other things in the magazine which would be art, then?

Q. Yes; an art department, so denominated and listed; but the Varga-girl pictures do not come under that. You would still say they are art? A. Well, they could be. Not very good, not the best.

Q. You are not qualified as an art critic, though? A. No; I am not.

Mr. Hassell: That is all.

4157 *Redirect Examination by Mr. Bromley:*

Q. You have four young children; have you not, Reverend Luchs? A. Yes, sir.

Q. The boy you spoke about, who was sent home by the Army as delinquent: there are other magazines, magazines other than Esquire, which you would not want him to have access to, as well as Esquire? A. Very much so; you are right.

Q. The Seldes review of "Star and Garter Blues" in the January issue at page 83 is just a factual report of a Broadway show; is it not? A. Yes.

4158 Q. Do you rely upon your conclusion that the report, which is in the nature of a review, is of a debunking nature because of the sentences or clauses in the very paragraph Mr. Hassell referred to but which he did not read, to-wit: the first whole paragraph in the second column on page 83, such as:

"A stripper who does an orgiastic dance verges on the erotic; but the entertainment value isn't high, in fact, the burlesquers learned long ago that the strong emotions they

*Fred E. Luchs—for Respondent—Recross.*

wish to arouse are quenched by the cold water of comedy"? 4159

A. I think the whole article is debunking.

Q. Did you read Paul Gallico's piece on burlesque at page 32 of the May issue? A. Yes.

Q. What is your opinion about that piece? A. That was even stronger than Seldes' article; in fact, I think he refers to monkeys. I mean, after reading that article no one would want to go to it; anyone would feel cheap to even go to a thing like that.

Q. Your reference to monkeys is where Mr. Gallico called the chorus line of performers "poor, cold monkeys"? A. Yes. 4160

Q. By the way, would you consider the piece of fiction which is among the complained-of material, entitled "Portrait Above the Fireplace", to be literature? A. I think it is one of the great stories I have read; in fact, to me, I think a great sermon could be taken from that story.

Mr. Bromley: That is all.

*Recross Examination by Mr. Hassell:*

Q. Do you think it is entirely decent to trifle with the emotions of an individual who has built up his life on an ideal of a picture of a woman whom he has generally held in his mind as his mother, to trifle with that ideal by characterizing that woman as the madam of a bawdy house? Do you think there is anything indecent in that? A. I think it is possible, just as some of the Renaissance and Reformation artists would use women who are not of the highest type for their models. I mean, here was a man under the influence of liquor who admitted it; I mean, it is not a casual situation. The man had been drinking and he admitted it and that is the reason he told the truth, the whole story. 4161



*Fred E. Luchs—for Respondent—Recross.*

4162

Q. Isn't that a shocking idea, though, to confront a man with, that here, this picture, which he idealized, was really the picture of a madam of a bawdy house? A. It is, but I think it is so true that we have those ideals and it has helped us.

Chairman Myers: Did you ever hear of the man who said, "Let him who is without sin among you cast the first stone"?

A. Yes, sir.

4163

Chairman Myers: About whom was he talking?

A. He was talking about such a woman.

*By Mr. Hassell:*

Q. What did that man say to the woman after he said that? A. "Neither do I condemn thee."

Q. Didn't he say, "Go forth and sin no more"? A. Yes.

Q. You didn't find that here: did you? A. That is past.

Q. What? A. That is past; we know nothing of her past; we know one time she was.

4164

Q. But this story you are referring to, "The Portrait Above the Fireplace", has as its climax this shocking revelation which is calculated to debunk the man who has built up this ideal? Isn't that what it means? A. What was that, again?

Q. I say, you have the climax of this story, this picture of this woman which has been used and around which this man has built his life;— A. Yes.

Q. —you have a debunking of his ideals by the revelation that this woman was the madam of a bawdy house;— A.

*Fred E. Luchs—for Respondent—Recross.*

May I be allowed to see the last line or two of that story again? I think the last line makes it a truly great story. 4165

Q. What issue is that? A. October 1913, page 128.

Q. The last line does what? A. Look at the next-to-the-last paragraph:

"Tressant was shaken."

That is, he admits his mistake.

Then the last line in the story:

"Good night, Mother."

I mean that is why it is a great story, that he didn't go out and go back to carousing and drinking again but he kept his faith in an ideal. That is why it is a great story.

Q. Would you say that his friend, Tressant, who made the revelation, would display a sadistic bent of attitude? 4166

A. Without re-reading it, my impression is that he was drinking and he was just given to talking.

Q. Was he trying to tear down the ideal of his best friend?

A. Yes, thinking, when he was drinking, that it was a good trick, probably.

Q. Do you think this story contributes to the exalted position that everyone holds motherhood to occupy? A. Here is a man who could believe in motherhood even when he knew the worst of her. It reminds me of that poem, "Mother of Mine".

Q. Now, refer to "The Savage Beast In Us", pages 32 and 33 of the May issue of Esquire. Do you note the illustrations in that article on those two pages? A. Yes. 4167

Q. You think they are entirely decent, do you? A. I hadn't thought much, one way or the other. They are so caricatured in a way, so inaccurate, that I don't consider them very good art and I don't think they are stimulating.

Q. You think this article would have the effect of discouraging persons who ordinarily attend burlesque shows, from going to them further? A. I think so.

*Fred E. Luchs—for Respondent—Recross.*

4168

Q. Do you have any idea why such an article should be included in such a magazine for men, as Esquire? A. I do not know the policy of the editor.

Q. And you don't have any thought on why such an article should be included in such a magazine? A. No. I was glad to see it for its emphasis.

Q. The magazine is a sophisticated magazine, I believe you said? A. Yes.

4169

Q. And intended for sophisticated men and still you don't understand why such an article could be covered in such a magazine. A. To appeal to sophisticated men. I don't know what was in his mind, but thinking for my own mind, sophisticated men go to this sort of thing and he is showing them up and saying politely: "How foolish you are to go to these things."

Q. Now, reference was made to the Gilbert Seldes article on this burlesque show, known as "Star and Garter", and to the fact that that purports to be a factual report. Do you think the fact that matter may be factual— A. I didn't get one word there.

Q. Do you think that the fact that matter may be factual eliminates any indecency or obscenity that might otherwise be attached to it? A. It would be possible in a matter of fact article to put that in.

4170

Q. I see. In other words, the truth of the matter doesn't necessarily determine whether it is decent or indecent, does it? A. A truthful article could have something in it that is indecent.

Q. That can be indecent? A. A truthful article can easily indulge in the indecent.

Mr. Hassell: I see. That is all.

Mr. Bromley: That is all. Thank you, sir.

(Witness excused.)

*Abe Blinder—for Respondent—Direct.*

ABE BLINDER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: 4171

*Direct Examination by Mr. Bromley:*

Q. Your full name is what, sir? A. Abe Blinder.

Q. You live where, sir? A. Chicago, Illinois.

Q. You are employed by Esquire, Incorporated? A. Yes, I am.

Q. In what capacity? A. I am the circulation director of Esquire, Coronet and Apparel Arts.

Q. And have been such for how long? A. Twelve years. 4172

Q. Will you explain briefly your duties as circulation director? A. My job is to take the magazines after they are printed at the printers and distribute them to the newsstands and to the subscribers, and to handle all of the sales of the subscriptions and on the newsstands of the single copies.

Q. Will you explain to the Board generally how Esquire is circulated? A. Yes. It is circulated in two distinct ways, one on the newsstands. We have an arrangement with the Curtis Publishing Company who have an organization to distribute their own magazines, and they in turn distribute our magazines. 4173

The distribution is handled through wholesalers throughout the country. There are about one thousand of such wholesalers and these wholesalers handle most of the major magazines.

There are two distributing set-ups, the American News Company and the independent wholesale set-up, and the independent set-up handles 18 of the 25 largest magazines.

For example, they handle the Post, Ladies Home Journal.

*Abe Blinder—for Respondent—Direct.*

4174

McFadden Publications, Reader's Digest and things like that.

These local wholesalers in turn distribute the magazine through drugstores, bookstores, department stores and other retail outlets like that. There are about 75,000 outlets throughout the entire country and Esquire is on 55,000 of those outlets. The 20,000 outlets we are not on are what is known in the trade as grocery-store outlets. These are small dealers who handle only one or two copies of magazines like Reader's Digest and the Post.

4175

The other way we circulate our magazine is by subscription. We have three distinct ways of getting our subscriptions. The first way is by direct mail. We mail millions of pieces to various lists, listing subscribers. For example, we take a list like Poor's Directory, which is a directory of all of the directors of corporations in America. That is a list of about 90,000 of the leading directors in the country, and we make a mailing to that list soliciting their subscriptions.

I recall that in that particular list we secured 6,000 of those directors as subscribers.

Then, of course, we solicit our renewals by mail when the subscriptions expire.

4176

The next main category in how we get our subscriptions is through catalogue subscription agencies. There are seven such agencies and they represent all of the leading popular magazines like the Post, Time, Colliers, Newsweek, and, of course, our publications. They get their subscriptions through local agents which they have throughout the country who are comprised primarily of elderly people, invalids, housewives, and people who just want part time operations, and then a large part of their business is through retail outlets like department stores and bookstores and magazine stores.



*Abe Blinder—for Respondent—Direct.*

Then a third main category from which we get our subscriptions is local agents. Those are agents that report directly to us, that send their subscriptions in direct to us. We have about 5,000 of such agents.

4177

Included in those agents are the same kind as do business with the catalogue agencies.

In other words, about half of them are the local agent of the elderly person type, the invalid, the housewife type who wants part time work, and the other half are men's stores and department stores who send their business directly to us.

We have, for example, such fine stores as Wanamaker's in Philadelphia, Marshall Field and Carson, Pirie, Scott in Chicago, Juster Brothers in Minneapolis, Ellis Ayres in Indianapolis, Straus and Block in Indianapolis, J. L. Hudson—stores like that that sell subscriptions to our publication and then send them in to us.

4178

And, we did have one other way of getting subscriptions which we have dropped because we are getting more subscription business than we need, and that was through combination with newspapers. We had many leading newspapers in the country that sold subscriptions to our publication as they do with many other publications in combination with their own newspaper.

Q. I believe one of the members of the Board raised a question about the extent of the sale of Esquire and Varga calendars to the armed forces. Will you tell us precisely what that situation is? A. We have a subscription list of 300,000 and of this 300,000, 69,000 are subscriptions addressed to men in the service. We know what that count is exactly because we had to make a card list of all of our service subscriptions because we get so many changes of address on service subscriptions.

4179

*Abe Blinder—for Respondent—Direct.*

4180

Twenty-three per cent of our subscription list is addressed to men in the service.

Then, Esquire is sold at all of the post exchanges throughout the country. This is handled by Curtis Publishing Company and local wholesalers who have access to the post exchanges themselves. They handle all of the popular magazines and Esquire is on sale on all of them.

Then, in addition, we have an arrangement with the War Department, with their overseas post exchange division which is located in New York, through which we handle the sale of copies of Esquire to boys overseas by means of the post exchanges.

4181

Now, we sell these copies to the War Department at a wholesale rate. That is the same wholesale rate that our distributors pay, and they in turn, we understand, resell it to the boys overseas at that same rate. In other words, they don't make any profit in the sale of the copies to the boys overseas.

Q. About how many a month go overseas at that wholesale rate? A. Well, this started in February, 1943, with about 5,000 copies and the latest reservation is for 30,000 copies.

4182

Q. What about your special edition that was mentioned here? A. Well, that is a military edition that we have been working on with the Army Special Services Division. We have been negotiating with them all summer. They have an arrangement where they send a package of magazines and books to the boys overseas; they send a package weighing four pounds to a unit of 150 men. That is in combat overseas, and they particularly wanted to get Esquire included in that package because they told us that they conducted a survey overseas and found that the three magazines that the boys wanted most were Esquire, Reader's Digest, and Life Magazine.

*Abe Blinder—for Respondent—Direct.*

We finally concluded negotiations with them to arrange for a military edition after they were able to secure additional paper for us, over and above the paper granted to us by the W. P. B., and I have made several trips to Washington here to contact Major Troutman in the Special Services Division, arranging for this entire set-up.

4183

At first we were going to get out a miniature edition like the one that Time and Newsweek and the New Yorker get out, but the Special Services Division suggested that we keep the full size because the boys wanted the pin-ups in the full size.

Now, we have arranged to give them Esquire in the full size without advertising; it would be just the editorial content of the magazine.

4184

We started with the November issue, and distributed 29, 100 copies of the November issue and the same number on the December issue. Those copies have advertising because we were not able to arrange the military edition without advertising until the January issue, but on the January issue they will get copies without the advertising. They have asked for 73,500 copies of the January issue and succeeding issues and we have agreed to give them not only the 73,500 each issue, but up to a maximum of 100,000 copies an issue. They figure that that will enable them to cover a million to a million and a half of the boys in the overseas service.

4185

Q. Now, will you tell us about the distribution of the Varga drawing calendars? A. You mean how it started?

Q. Well, yes, when it started and what the volume is. A. Well, the Varga calendar, starting in the month of December, 1940. It came out in our January, 1941, issue. We ran an ad with a coupon in that issue offering a bound reprint of the calendar for 25 cents. I remember that episode

*Abe Blinder—for Respondent—Direct.*

4186

very well, because it was my job to forecast how many reprints we should get up and have bound up, and I ordered 25,000 calendars.

Well, the orders just poured in and we had to have about eight or nine printings that year, and it came to a final sales total of 327,000.

For the next year, the 1942 calendar, the orders increased. Again all we did was to run two ads in the magazine with coupons for orders, what we call mailing coupons, and we got orders for 504,000 calendars.

4187

Then, on our 1943 calendar we sold a total of a million and this year it appears that we will sell in the neighborhood of two and a half million of those calendars.

Q. Can you give us any idea as to the extent to which the Varga calendar has gone to service men? A. Yes. Of the 1943 calendars that we sold a million of, 300,000 were sold by mail. Of the 1943 calendar, we put a bunch of them on the newsstands; that was the first year we had them on the newsstands, so only 300,000 of the million came directly to us by mail. I made an analysis of the 300,000 and found there were 49 per cent addressed to men in the service. That is, they were either orders from men in the service or from civilians having them sent to men in the service.

4188

Q. Have any business firms used the Varga calendars for advertising purposes? A. Yes. That was something that started last year also. We got a lot of requests from companies who wanted to send the calendars out to their customers, so we started a calendar department offering that privilege.

I made a list of a few of the outstanding companies that we got orders from last year. Here are companies like the American Wire Company of Philadelphia, the Consolidated Company of Cleveland, Ohio, the Crown Mills, Inc., of

*Colloquy.*

Marcellus, New York, the P. H. Denly Corporation of Chicago, the Thomas Edison Company of St. Louis, Missouri, the General Air Conditioning Corporation of Los Angeles, California, J. P. Smith Shoe Company, Chicago, Illinois.

4189

That is only a few of the companies that buy these calendars and on which their advertisement appears which they are sending out to their customers.

Q. In connection with the wave of pin-up demands by the armed forces, to which reference has been made, can you tell us anything about the extent to which Esquire has been supplying pin-ups to the services? A. Well, we get just unlimited requests from boys in the services for reprints of the pictures that appear in Esquire. That is one of my duties to handle those, and I get many letters every day requesting these reprints. I finally got the idea that it might be helpful if we sent some of these reprints out, so I sent a letter to Army camps and Navy bases in the country offering them a package of 50 reprints, just assorted, whatever we had left of the color pictures that have appeared in Esquire. That is the Hurrell, Varga, Waxman dog pictures, Leydenfrost, the cartoons, the Szyk caricatures; all the stuff we have run all along.

4190

That is a package, incidentally, which we had gotten up and offered to the general public for five dollars. We had had a lot of requests from the general public for material like that which they wanted to use in decorating their game rooms, rumpus rooms, waste-baskets, screens and that type of thing, so I thought it would be a nice gesture to send these sets to the Special Services Division at Army camps and Navy bases, so I sent a letter out offering these reprints with the compliments of Esquire.

4191

We received back 600 requests from the various camps. I think we mailed a total of 1,000 letters. The letters came



*Colloquy.*

4192 in from majors, captains, lieutenants, colonels, sergeants: whoever happened to be the special service officer at each camp, asking that we send them a set of those reprints.

I remember one letter we got from the Navy commandant's office in New England. They asked for 25 sets which we sent to them because they wanted to cover all the bases in the New England area. They asked for 25 sets and we sent it to them. They wrote me another letter later on and asked for 25 more sets which we sent them.

4193 I also remember one other letter that was particularly impressed upon me. it was a letter from a colonel at an embarkation camp. I believe it was around Virginia, in which he wanted this material particularly because he thought it would lift the morale of the boys who were going overseas, and he sent me a picture of a thing which he had gotten up at the time which he used expressly to use these pin-up pictures, and he said it was the last thing the boys saw before they went overseas. I have a copy of the picture here if you would like to see it.

Q. Is this the picture that shows a bulletin board "Best Wishes, Esquire"? A. It is.

Mr. Bromley: I offer it in evidence.

Mr. Hassell: I object.

4194

Chairman Myers: What is its competence?

Mr. Bromley: It shows the usage and general acceptance of the Varga girl.

Mr. Hassell: Mr. Chairman, I have been waiting until this witness finished. All of this witness' testimony up to this time is absolutely irrelevant and impertinent to the inquiry here and it is exactly and definitely on all fours with the decision of the Circuit Court of Appeals in the Second Circuit in the Levine

*Colloquy.*

case which had to do with the sale of books, and the Court specifically held that the exclusion of lists of purchasers of books by the Court below was correct.

4195

So I move that this testimony all be stricken and that all similar testimony in the record be stricken, and that if I have been shown as asking any question respecting such matter that that be stricken also.

Mr. Bromley: May it please the Board, under 39 U. S. Code Annotated, Section 226, there are specified the four conditions which a publication shall fulfill.

The fourth condition is as follows:

4196

"The publication must be originated and published for the dissemination of information of a public character or devoted to literature, the sciences, arts, or some special industry, and have a legitimate list of subscribers."

Mr. Hassell has stated that Esquire should be barred from the mails on the ground that it does not comply with the provisions of the fourth condition for admission to second-class mailing privileges.

It is, therefore, our position that we should be allowed to show a cross-section of Esquire's subscription list in order to prove that Esquire complies with this provision of the fourth condition of second-class mailing.

4197

Moreover, in his Appendix A to the transcript of the proceedings relating to the application for second-class mailing privileges, Mr. Hassell, who prepared this document, citing the case of *United States v. Rebhohm, et al.*, 109 Fed. 2nd, 512 (C. C. A. 2nd, 1940) states:

*Colloquy.*

4198

"The Court then proceeded to point out that such abuse had been established as 'defendant had indiscriminately flooded the mails with advertisements, plainly designed to catch the prurient. The circulars were no more than appeals to the salaciously disposed.'"

Mr. Hassell further goes on in his Appendix A brief:

4199

"Here we find that none other than the Circuit Court of Appeals for the Second Circuit is influenced in its interpretation of what is and what is not obscene by the method of distribution of the matter under consideration."

Since Mr. Hassell takes the position (a) that Esquire does not comply with the fourth condition for second-class mailing and (b) that the method of distribution, i.e., whether the magazine is only distributed to those who are salaciously disposed, it is proper for us to show the nature of the character of the persons to whom Esquire is sent through the mails and the numerous reputable hospitals, institutions and so forth that receive this magazine.

4200

The case of *United States v. Levine*, 82nd Fed., 2nd, 156 (C. C. A. 2nd, 1936), which has been referred to as authority for not allowing this evidence to be introduced is clearly distinguishable on the ground that it was decided under 18 U. S. C. A. 334 which makes it a crime to send obscene matter through the mails and has no relation to the conditions for second-class mailing.

Chairman Myers: That is the point I want to clear up in my mind. I had in mind the *Levine* case. I thought this other point was involved in the *Levine* case too.

*Colloquy.*

Mr. Hassell: May I make a statement in answer to counsel's statement?

4201

Chairman Myers: Yes.

Mr. Hassell: As to the first point, that this testimony is pertinent under the last clause of the fourth condition of 39 U. S. Code 226, namely, "having a legitimate list of subscribers," I submit that from the outset I have made no contention that the publication does not have a legitimate list of subscribers.

We freely admit that. That is not in controversy in any manner whatsoever.

As to counsel's reference to a document that I got up for use in another second-class case, not of this type, referring to the Rebhohm case, there the circular was in itself salacious and was involved in that very prosecution.

4202

We don't have that situation in this case at all. I submit that this is an obvious attempt to get in irrelevant and impertinent matter here that has no bearing on the issue involved in this case whatsoever.

Mr. Bromley: I am not willing to accept Mr. Hassell's proffered stipulation in view of the long history we have had here, trying to pin him down as to whether that is under the fourth condition or not. I want to prove where we are.

4203

Chairman Myers: Let me see the Levine case which is the case I had in mind which excluded this kind of evidence. I thought this matter of qualification is involved here.

Mr. Bromley: I don't think it is involved here at all. I think it is purely obscenity.

*Colloquy.*

4204

**Mr. Hassell:** It specifically covered the exclusion of lists of purchasers and held that was a correct act on the part of the trial judge.

**Chairman Myers:** Apparently in this case only a conviction on obscenity was involved.

**Mr. Bromley:** That is the way I read it, sir. That is, only 334 was involved and not 226.

**Mr. Hassell:** That is correct.

4205

**Chairman Myers:** I think that is right. Then, do you have any authority on the question of establishing matter that disseminates information of a public character or is devoted to literature, sciences, or the arts or special industry?

**Mr. Bromley:** We have not been able to find a single case which construes that language in any such shape or manner.

**Chairman Myers:** What do you say to this? In the last paragraph of the Levine case there is this language:

4206

"The judge refused to allow in evidence a list of purchasers of the books, among whom were a number of well-known persons. He was right. Such a list taken alone told nothing of the standing of the works in the minds of the community; even respectable persons may have a taste for salacity. Obviously it would be impossible without hopelessly confusing the issues to undertake any analysis of such a list by finding out why each buyer bought. On the other hand, it is reasonable to allow in evidence published reviews of qualified critics—quite another thing, incidentally, from expert witnesses at the trial—for such evidence does not lead far afield and is ration-



*Colloquy.*

ally helpful, though in the end it is the jury who must declare what the standing shall be. So far as that may be a menace to the free development of the arts, it is a risk which Congress has seen fit to impose, and which we cannot gainsay, even if we would."

4207

Mr. Bromley: I agree with that statement. If the list is offered merely to rebut the charge of obscenity by an attempt to show that reputable people buy the material, I think we will be concluded by that decision. But I am not offering it for that purpose. I am offering it because the Department has taken the position repeatedly that we do not comply with the provisions of the fourth condition, and also he has openly charged that it is a hush-hush magazine and, therefore, since the fourth condition says that we must have a legitimate list of subscribers, it seems to me I am entitled to prove—

4208

Chairman Myers: I don't believe Mr. Hassell ever questioned the fact that you have a legitimate list.

Mr. Bromley: He doesn't now, but I don't see why we should be required to take his belated concession. I want to prove we are complying with that requirement and how we do comply with it

4209

Mr. Hassell: Mr. Chairman, the charges initiating this proceeding don't make any such charge. The matter has not been in issue at all from the very first witness, Mr. Wentzel. It was admitted this publication had a list of some 300,000 subscribers and there was no question whether they were legitimate or not. That is conceded. That is not at issue.

Mr. Bromley: Will you stipulate we comply with the fourth condition of Section 226?

*Colloquy.*

4210

Mr. Hassell: I certainly will not, but the last clause, "having a legitimate list of subscribers," I will stipulate you comply with.

Mr. Bromley: I am not willing to take that. I will take a stipulation that we comply with the whole thing and not a part of it.

Mr. Hassell: Absolutely not.

4211

Chairman Myers: It is the view of the Board that the evidence shall be admitted for the sole purpose of touching on the fourth condition of Section 226. But it is our view that the question of having legitimate lists of subscribers is not involved at all and that it relates to the rest of the condition. But for that purpose and that purpose alone—it is not admitted with respect to the other provisions of the charges because I think that is out under the main case.

What was the question you had? It was on the question of this photograph?

Mr. Bromley: I will withdraw it.

Chairman Myers: I was going to say that I don't think it is proper.

4212

Mr. Bromley: Can we get this concession on the record: that there is now no charge that our magazine is a hush-hush magazine and surreptitiously distributed?

Mr. Hassell: I have not charged it is a hush-hush magazine or surreptitiously distributed. I have charged that it is a sophisticated, racy magazine, that a good many people probably would not want in their homes and would not have in their homes where they have young and adolescent children.

Mr. Bromley: Will you concede it is openly and regularly distributed like any other reputable magazine?

*Abe Blinder—for Respondent—Direct.*

Mr. Hassell: Certainly, and I will concede that it is distributed through the mails improperly at a subsidy of \$500,000 a year.

Mr. Bromley: That doesn't help me very much. I just don't like that.

Mr. Hassell: I can't let counsel put words in my mouth as to what I am going to agree to.

*By Mr. Bromley:*

Q. I have just one other thing I want to cover.

In connection with the surveys made by the Curtis Publishing Company and Mr. Crossley, could you tell the Board, based on an analysis of the subscription list, the distribution of the subscriptions population-wise? At least, can you tell us how many of the subscriptions go in cities of over 100,000 and how many of the subscriptions go in cities under 2,500, which was the down limit of the Crossley survey so far as urban results are concerned? A. Yes, we are required to make a population breakdown every six months for the Audit Bureau of Circulations. That is an organization of all of the major publications that carry advertising and it is maintained and supported by members, and this organization requires these statements on circulation-population breakdowns to be filed, and then they come in and audit these reports.

I have had a copy of our last report that we filed for the first six months of this year and we have a population breakdown on that particular report. It shows that 48 percent of our circulation goes into cities over 100,000 and that 8.38 goes into cities of less than 2,500.

The population breakdown is compiled by various population groups here.

*Colloquy.*

4216

Mr. Bromley: That is all.

Mr. Hassell: I move that the balance of the testimony of this witness be stricken on the same ground as covered in the other, and the fact that reference to the Crossley survey or any other survey that might have been made in prior testimony, that is in this record over my objection, does not justify this matter going in.

Chairman Myers: Overruled on the same conditions set forth in the overruling of the last motion.

4217

Mr. Hassell: May I have an exception to the Board's ruling on that?

Chairman Myers: Yes, and your exception may be noted.

Mr. Hassell: No questions.

(Witness excused.)

4218

Mr. Bromley: I should like to advert to the situation of the three letters which each side put in yesterday, and to offer another letter in evidence, for the reason that I find that since the Government got in one ahead of the three, they now have four whereas we only have three, a fact which I overlooked.

Chairman Myers: I don't recall the fourth.

Mr. Bromley: They got one in before and then we made the "three" arrangement.

Mr. Hassell: I don't recall that. What was the letter I got in before?

Mr. Harding: Cambridge Glass Company.

Mr. Bromley: I call that an unconscious gyp.

Mr. Hassell: Oh, that had reference to the distribution of these Varga calendars and desk pad and so forth.

*Colloquy.*

Mr. Bromley: But you overlooked the fact that right in the middle it talked about the magazine.

4219

Mr. Hassell: I was not offering that as it related to Esquire magazine directly, but simply as it related to the business of selling the portion of the magazine that we contend here is salacious, that is, the Varga pictures on playing cards, desk cards, calendars, and so forth.

Mr. Bromley: But it had a very direct reference to the magazine as a whole and it was very uncomplimentary.

Chairman Myers: You had better let Mr. Hassell see the letter.

4220

Mr. Bromley: I am sure once he reads it he won't have any objection to it. (Letter handed to Mr. Hassell.)

Mr. Hassell: Mr. Chairman, I do have a very definite objection to this letter. This letter deals with the very question that we have been discussing here in connection with the Levine case. It purports to show that this particular library likes to have this magazine.

It is designed to lend standing to the magazine by reason of the fact that it is deposited in this library.

4221

Now, if we went into this question, possibly I might show that this library has shown in the past, or might have shown in the past, that it was interested in getting subversive material from Germany and maintaining that in the library, and other matter of an objectionable character.

I think this goes to the very point that we have been discussing here, and it involves the reputation and standing and the type of material in this library, but certainly this Board does not intend to go into that.



*Colloquy.*

4222

It is far more than the testimonial of readers of the publication.

Chairman Myers: Would you be willing, Mr. Hassell, to withdraw one of your letters that you placed in the record?

Mr. Hassell: Absolutely. I would be willing to have the glass company man's letter disregarded insofar as it refers to Esquire, the magazine itself.

Chairman Myers: We can't do that. The whole business is in. We will have to take the whole letter out if you take it out.

4223

Mr. Hassell: Let it go out. I have forgotten now just how it came into the testimony.

Chairman Myers: Do you remember the number of that exhibit?

Mr. Bromley: 29.

Mr. Hassell: This letter from the Cambridge Glass War Service Committee specifically refers to the kit. He says he doesn't want the kit. Incidentally he mentions the magazine.

Mr. Harding: He mentions that he doesn't want the magazine either.

4224

Mr. Hassell: I am willing to have it go out. I don't think that sort of matter is at all binding or should in any way influence the decision of this Board.

Chairman Myers: Well, let Post Office Department Exhibit 29 be withdrawn.

(Department Exhibit No. 29, heretofore introduced in evidence, was withdrawn.)

Chairman Myers: Any further witnesses?

Mr. Bromley: We have a matter of some four or

*Colloquy.*

five stipulations here to clear with Mr. Hassell. We would like to meet with him over the noon-recess or at least deliver the material to him so he can read it and possibly stipulate.

4225

Chairman Myers: How does that fix you as to time? Would 1:30 be too short a time for you?

Mr. Hassell: Well, not having seen the stipulations or having any information as to what they may cover or are designed to cover, I am not in a position to say.

Mr. Harding: The same matter I discussed with you before. A psychiatrist, an educator, and a pastor: three short stipulations.

4226

Mr. Hassell: A psychiatrist and an educator and who?

Mr. Harding: A clergyman.

Mr. Hassell: Well, it would probably take us at least half an hour.

Chairman Myers: Suppose we make it 2:00 o'clock.

Mr. Hassell: All right.

Chairman Myers: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:06 o'clock p. m., the hearing was adjourned until 2:00 o'clock p. m.)

—4227

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AFTERNOON SESSION.

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(The hearing was resumed, pursuant to the adjournment, at 2:00 o'clock p. m.)

Mr. Bromley: If the Board please, under the prior stipulation as to witnesses we now offer the same agree-

*Colloquy.*

4228

ment and stipulation with respect to Dr. Richard H. Hoffman, who was born in 1887, graduated from Cornell University in 1908, was an interne at Mt. Sinai Hospital in 1911, is a Fellow of the American Medical Association specializing in psychiatry and neurology; chief of the neurological institute clinic of New York City for ten years, and for ten years chief of the clinic for mental defectives, Post-Graduate Hospital, and private professor of mental diseases, Post-Graduate Hospital 1920 to 1923, studied in Vienna, Munich and Berlin 1925 to 1927, wrote "The Struggle For Hell" in 1929, and is now visiting neuro-psychiatrist at Beth David Hospital, New York City.

4229

He would testify that he finds nothing obscene, lewd, lascivious, indecent, or filthy in any of the material objected to and states it to be his opinion that nothing in the objected to material, taken either singly or collectively, would have any tendency whatsoever to stimulate impure thoughts or acts or corrupt the morals of any person, nor would said material have any tendency whatever to lower the standards of right or wrong in any class of population.

4230

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JOSEPHINE MIXER GLEASON. Born 1892. Graduated from Vassar 1914 with A. B. degree; graduated from Cornell University 1917 with Ph. D. Was assistant professor of psychology at Vassar from 1914 to 1916. Was instructor at Cornell University 1916 to 1918, and has been associate professor of psychology at Vassar from 1918 to date.

Miss Gleason, having studied the objected to ma-

*Colloquy.*

terial, states that based upon her experience with Vassar girls, as chairman of the committee on admissions since 1930, and as professor in the field of psychology, she would testify that in her opinion none of the material complained of is obscene, lewd, lascivious, indecent, or filthy, and that none of such material would have any harmful effect upon girls of college age.

4231

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HEDLEY S. DIMOCK, Dean of George Williams College and professor in that school. Now on leave to conduct the recreation programs of the U. S. O. in their main office in New York.

4232

Was at one time director of personnel at Camp Ahmek, one of Canada's leading private camps for boys, and prior to his enlistment in the Canadian Army during World War I was associate secretary of the Y. M. C. A. in Saskatoon, Saskatchewan. Holds an A. B. degree from the University of Saskatchewan, M. A., B. D., and Ph. D. from University of Chicago.

Prior to joining the staff of George Williams College he was instructor in psychology and education at Carleton College, and has written many books in his field of education.

4233

He would testify the same as Professor Ernest Osborne, of Teachers College, Columbia University, insofar as said testimony relates to youth in camping activities.

We have a stipulation prepared for Reverend Ray Anderson Eusden, who is a clergyman, but I understand Mr. Hassell won't stipulate with respect to him just because he is a clergyman.

*Colloquy.*

4234

Mr. Hassell: This statement that counsel refers to is an affidavit. I feel that it is necessary for the Government's case here, if we are going to consider this matter in arriving at this opinion, that we should have an opportunity to cross examine witnesses of this sort.

Mr. Bromley: I would like to recall Mr. Gingrich.

Mr. Hassell: May I inquire what the object of calling Mr. Gingrich is? Is this direct examination?

Mr. Bromley: Yes, just on the Petty girl plate.

Mr. Hassell: Is this matter that you inadvertently overlooked in your direct examination?

4235

Mr. Bromley: No. It is a matter which you questioned on cross examination which I now have to go into.

Mr. Hassell: Well, counsel had an opportunity, I submit, Mr. Chairman, to cover this in his redirect examination of this witness.

Chairman Myers: Are you taking it up as a matter of redirect examination?

Mr. Bromley: No. I would like to recall him for direct on this one point.

Chairman Myers: Well, better clear it up if you can.

4236

Mr. Hassell: Well, if we apply the same procedure to all the other witnesses we may be here another month.



*Arnold Gingrich—for Respondent—Recalled—Direct.*

ARNOLD GINGRICH a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

4237

*Direct Examination by Mr. Bromley:*

Q. Mr. Gingrich, I show you these two plates and ask you whether they represent, first, the plate of the Petty girl as originally submitted to the Post Office Department, and, second, the plate of the Petty girl as modified and finally published? A. They do.

Q. Now, the second plate, that is a modified plate, was submitted to the Chicago postmaster, was it not? A. That is correct.

4238

Q. And it was on the basis of that modified plate that the issue was approved for mailing second class? A. Yes, with the understanding that this would be done and it was done.

Mr. Bromley: I offer both of these in evidence.

(The documents above referred to were marked, respectively, Respondent's Exhibits Nos. 125 and 126 for identification.)

Mr. Hassell: Will you distinguish between them, which is the original plate and which is the modified? In other words, how are they marked?

4239

The Witness: They are marked old and new, Mr. Hassell.

Mr. Hassell: Was 126 submitted to the Solicitor, Mr. Gingrich?

The Witness: I don't find any further correspondence beyond my letter in confirmation of the telephone call. Recalling the complete set of plates which we

*Arnold Gingrich—for Respondent—Recalled—Direct.*

4240

had prepared as we always did upon the request of the Chicago post office, I thought that we had done it both in Chicago and here, but quite evidently there was no separate submission of this particular one.

Mr. Hassell: In other words, there was no submission to the Solicitor of the revised plate?

4241

The Witness: No. There was simply an agreement that if I would make the changes that I promised to make that the issue could be accepted for mailing in Chicago. I, at the time of the letter concerned, stated that we would remove this one noticeable line, if you recall the testimony, to approximately the equivalent of the depression of the back bone, and that is the change that was made on the plate as this exhibit clearly shows.

*By Mr. Bromley:*

Q. 125 is the original plate and 126 is the modified one; is that correct? A. That is correct, yes.

Mr. Cargill: With whom was that agreement made, Mr. Gingrich?

4242

The Witness: With Mr. Miles on the telephone. Realizing that the plate was completed and that there was no longer time to make a new engraving, I simply told him that we would reduce the objectionable strong line there by running through the engraving and he said that if I would do that then that would remove the objection. You will see that I undertook to make that posterior line approximately the equivalent of the line of the backbone, and the second plate shows how that was accomplished, by revision of the engraving plates.

Chairman Myers: The exhibits are received.

*Nelson B. Wentzel—for Respondent—Direct.*

(The documents heretofore marked Respondent's Exhibits Nos. 125 and 126, respectively, were received in evidence.)

(Witness excused.)

Mr. Bromley: That is all. The Respondent rests.

Mr. Hassell: At this point I would like to recall Mr. Wentzel to the stand.

NELSON B. WENTZEL was recalled as a witness for and on behalf of the Post Office Department and, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination by Mr. Hassell:*

Q. Mr. Wentzel, you have already been sworn? A. Yes, sir.

Q. Have you examined your files at my request to ascertain whether or not the November, 1937, issue of Esquire and the July, 1937, issue of Esquire were held to be non-mailable? A. I have.

Q. In letters addressed to you by the Acting Solicitor of the Post Office Department? A. Yes.

Q. You have those letters? A. I have.

Q. Do you have copies of those letters and can you testify what notification, if any, was made to the publisher of Esquire of these rulings? A. I have the letters and I can do that.

The first letter was dated July 3, 1937, addressed at Chicago. It stated:

*Nelson B. Wentzel—for Respondent—Direct.*

4246

"The copies of the July, 1937, issue of Esquire submitted with your letter of the 17th ultimo in connection with the publisher's request for the acceptance of the second-class bound rate to publishers of copy of the monthly edition were submitted to the Solicitor of the Post Office Department with the request that he advise whether any of the matter embodied therein rendered the copies unmailable and he has advised as follows:

4247

"This issue of the publication is non-mailable under Section 598 P. L. & R. 1932'. Please inform the publishers that the law, Act of March 3, 1879, embodied in Section 520, P. L. & R., prescribes as one of the conditions to enjoy a publication to the second-class mailing privilege that it 'must regularly be issued at stated intervals'.

"The law contemplates that mailable issues meeting the requirements in all respects shall regularly be issued in accordance with the frequency under which the publication is entered as second-class matter and failure to comply with this requirement jeopardizes the second-class status of the publication.

"Copies of each edition of the next issue should be transmitted to this office. A copy of this letter is enclosed for the publisher."

4248

Q. Now, with respect to the other issue I mentioned, Mr. Wentzel? A. With respect to the November issue we wrote a letter dated November 3, 1937, to the postmaster at Chicago stating:

"The Solicitor for the Post Office Department has held that the November, 1937, issue of Esquire is non-mailable under the provisions of Section 598 P. L. & R.

"The July, 1937, issue of this publication was also held non-mailable by the Solicitor. Please again inform the

*Nelson B. Wentzel—for Respondent—Direct.*

publisher that the law, Act of March 3, 1879, embodied in Section 529, P. L. & R. contemplates that mailable issues of a publication meeting all the requirements prescribed for mailable matter for second-class shall 'regularly be issued at stated intervals' and that if mailable issues of the publication are not regularly published in accordance with the frequency with which the publication is entered as second-class matter the publication shall not continue to retain its second-class privilege.

4249

—"If the publishers of Esquire continue to indulge in the practice of publishing non-mailable issues it will be necessary to take action leading to the revocation of its second-class mailing privileges. See Section 602, P. L. & R.

4250

"Please also continue to send to this office copies of both editions of each issue of Esquire.

"A copy of this letter is enclosed for the publishers."

Q. I see. Now, does your file show whether or not an issue of 1940 was held to be unmailable by the Solicitor?

A. Yes, the file does show it.

Q. Do you have that here? A. I just have a memorandum of it here. That ruling, by the way, was made directly to the Chief Inspector's office.

Q. But a copy was sent to your office, was it not? A. Much later.

Q. In due course of business? A. Much later, yes.

4251

We have here an index of the evidence in the case and it says that under date of November, 1940, ruling to Chief Inspector dated November 22, 1940, rules that this issue of the publication is non-mailable under Section 598, P. L. & R., 1942. Recent issues of Esquire have contained matter of a questionable character but this issue completely oversteps the line. Inasmuch as the publication has already been mailed, it is suggested that the matter be brought to the attention of the proper United States Attorney.



*Nelson B. Wentzel—for Respondent—Cross—Redirect.*

4252

Mr. Cargill: That Section 598 that you referred to is the so-called "obscene statute"?

The Witness: It is.

Mr. Hassell: That is all.

*Cross Examination by Mr. Bromley:*

4253

Q. Never at any time subsequent to this last memorandum, Mr. Wentzel, and in 1941 and 1942, was any issue of Esquire which was actually mailed held to be non-mailable in whole or in part? A. I have a record here of the action taken with respect to each of the subsequent issues, and while there were a number that were referred to as being questionable, full responsibility for any violation of the law being placed on the publisher, I don't find any until beginning with 1943.

Q. Each one of those issues that I asked you about in my question was submitted to this office, wasn't it, as mailed?

A. I believe it was, either as mailed or subsequent.

Q. After you received these issues, in no instance was any one of them or any part of any one of them declared non-mailable. Isn't that so? A. Not so far as our records show.

4254

Mr. Bromley: That is all.

*Redirect Examination by Mr. Hassell:*

Q. Up until 1943, January, 1943? A. I so stated, until January, 1943.

Mr. Hassell: That is all.

(Witness excused.)

*Colloquy.*

Mr. Hassell: Now, Mr. Chairman, we have been taken somewhat by surprise by reason of the fact that the Board heard a good deal of opinion testimony in this case and by reason of the fact that the Board is considering this type of testimony, and it has been necessary for us to prepare some rebuttal testimony.

4255

Owing to the fact that all of my time was taken up with the daily hearings in this case, I have had no opportunity to get or examine witnesses to produce here in rebuttal, so with the permission of the Board I would like to have Mr. O'Brien take over the Government's rebuttal case, present the testimony, and examine the witnesses.

4256

Chairman Myers: All right.

Mr. Hassell: I am not quite certain whether he will be ready to go on this afternoon.

Of course, as the Board understands—I don't know whether counsel does or not—the Government has no fund even to pay expenses of witnesses brought here in a proceeding of this sort, and naturally we have to accommodate our time to the convenience of the witnesses.

We could not have these witnesses sitting around all this time. We thought probably this case would conclude tomorrow morning, that is, the respondent's case, and we would have been prepared to go on then, I understand from Mr. O'Brien.

4257

Chairman Myers: Call your next witness.

*Benjamin Karpman—for Post Office—Direct.*

## REBUTTAL BY POST OFFICE DEPARTMENT

4258

DR. BENJAMIN KARPMAN, a witness called by and on behalf of the Post Office Department in rebuttal, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien:*

Q. State your full name. A. Dr. Benjamin Karpman.

Q. Where do you live? A. 4490 Forty-second Street, Northwest, Washington, D. C.

4259

Q. What is your business, occupation, or profession? A. I am a physician.

Q. You are a doctor of medicine, are you? A. Yes, sir.

Q. And where do you practice that profession? A. St. Elizabeth's Hospital. I am a senior psychiatrist and psychotherapist.

Q. In Anacostia, D. C.? A. That is right.

Q. Doctor, will you outline your education in medicine and psychiatry for the information of the Board? A. I have a Master's degree in psychology, postgraduate; I have an M.D. and M.B. degree in medicine, University of Minnesota; I have a diploma, University of Vienna, in psychiatry, postgraduate course.

4260

Q. How long is it since you graduated in medicine, Doctor? A. 1919, 24 years.

Q. Since you graduated in medicine, will you give us some more specific account of your studies in psychiatry? A. I don't quite get the question.

Q. Where did you study psychiatry first? A. I came to St. Elizabeth's Hospital as a probational interne and I have advanced through several grades to the position of senior psychiatrist and psychotherapist, psychoanalyst.

Q. During the time you have been employed by St. Elizabeth's did you make any special studies in psychiatry or

*Benjamin Karpman—for Post Office—Direct.*

in psycho-analysis? A. Yes. I have been to Europe twice, once for a general trip to see what was going on in psychiatry in 1923 and 1924, and the second trip I went to Vienna for a year.

4261

Q. What studies did you pursue? A. I studied analysis with Steckel. I attended all the seminars and meetings of the Freud group. I knew Freud personally, I have been at his home.

I studied with Shidler and Ranke.

Q. Tell the Board who is Steckel. A. Steckel is one of the leading pupils of Freud, who has published about twelve volumes of studies dealing with a variety of psycho-neurosis and psychosis.

4262

Q. Is Steckel a world-recognized authority on psycho-analysis? A. I think so, especially in the dream interpretation.

Q. Is Freud also a world-recognized authority? A. Oh, yes.

Q. Tell us something about your work at St. Elizabeth's, Doctor. A. I am practically the only psychotherapist they have at the hospital, on the hospital staff now. The number of patients I have is very small but they are given individual and personal attention, most of them every day, and some three or four times a week.

I am doing psychotherapy with them, making psychoanalyses. Sometimes a year and sometimes two or three years is taken to pull them through, and I believe that I will not overstep my modesty when I say there are a number of cases on record who are cured and have stayed cured since they have been discharged from St. Elizabeth's.

4263

Q. Has your work in St. Elizabeth's dealt with persons having sexual problems, sexual neurotic or psychopathic?

A. I would say that 90 percent of the cases have many

*Benjamin Karpman—for Post Office—Direct.*

4264 problems centered on some sexual difficulty. It may not appear so at first by the presentation of the symptom, that is, they may complain of some anxiety or depression or a headache. I had a case of goiter—or it may be diarrhea, gastric ulcer, mucus colitis, or something which on the surface appeared to be physical maladjustment but on analysis appeared to be sexual neurosis.

Q. Have you from time to time since 1917 up to 1942 written a number of articles and books dealing with psychiatric psycho-analytic problems? A. Yes.

4265 Q. I hand you a list which begins in 1917—I think the first three items on there are not psycho-analytic in character, are they? A. That is correct.

Mr. O'Brien: I want to offer this list instead of reading it all out loud at this time. (Handing document to Mr. Bromley.)

Mr. Bromley: No objection.

Chairman Myers: It may go in.

(The document above referred to was marked Department's Exhibit No. 62 and received in evidence.)

4266 Mr. O'Brien: I wish to have this admitted into the record, please, and I also desire to read the names of the particular items or articles which relate to sex and so forth.

Chairman Myers: It has been admitted.

Mr. O'Brien: It has been admitted?

Chairman Myers: Yes.

Mr. O'Brien: Post Office Exhibit 62 shows that Dr. Karpman wrote the following articles, amongst those listed:



*Benjamin Karpman—for Post Office—Direct.*

The Sexual Offender, from the Psychoanalytic Review, Volume 10, July, 1924;

4267

The Sexual Offender, II, from the Psychoanalytic Review, Volume 12, pages 67 to 87, 151 to 159, 1926;

The Biology of the Inter-sex, from the Journal of Nervous and Mental Diseases, March, 1927;

Psychoses in Criminals, II, from the Journal of Nervous and Mental Diseases, March to June, 1929;

Impotence in the Male, from the Archives of Neurology and Psychiatry, April;

Frigidity in Woman, from the Archives of Neurology and Psychiatry, December, 1930;

4268

Psychic Impotence, from the Psychoanalytic Review, Volume XX, No. 3, July, 1934;

The Obsessive Paraphilias (Perversions), from the Archives of Neurology and Psychiatry, September, Volume XXXII, pages 577 to 626, 1935;

The Kreutzer Sonata, a Problem in Latent Homosexuality and Castration, Psychoanalytic Review, January, 1939;

Perversions as Neuroses (the paraphiliac neuroses), from the Journal of Criminal Psychopathology, Volume III, No. 2;

Criminology as an Expression of Psycho-sexual Infantilism, from the Journal of Criminal Psychopathology, January, 1942.

4269

*By Mr. O'Brien:*

Q. Doctor, in dealing with your neurotic or psychoneurotic patients, do I understand that you have inquired to some considerable extent into the matters which affect their sex lives? A. Yes.

*Benjamin Karpman—for Post Office—Direct.*

4270 Q. Which stimulate them to thoughts of sex, whether normal or abnormal; is that true? A. I don't do it directly. I mean, I don't ask directly the patients what stimulates them, but it comes out in the form of associations.

Q. It comes out in your analysis of the patient? A. Yes.

Q. It may be entirely voluntary? A. Oh, yes. I would say spontaneous rather than voluntary because it is all voluntary; otherwise they wouldn't come for treatment.

4271 Q. Have you any information, Dr. Karpman, as to whether any of your patients or many of your patients have made any purchases of the magazine Esquire for the purpose of stimulation?

Mr. Bromley: I object to that on the ground that it is incompetent and of course hearsay.

Chairman Myers: No, he is asking him of his own knowledge.

Objection overruled.

The Witness: May I answer?

Chairman Myers: Yes.

4272 The Witness: I wouldn't say that patients deliberately go out of their way to buy Esquire. They buy all sorts of things. They buy Film Fun, as one patient told me. They buy Laff; they buy Esquire. Some patients say that they buy Esquire because of the pictures that stimulate them, and some patients tell me that they buy Esquire because they like the short stories and the sports section, and so on. I don't think I could commit myself to the statement that they buy Esquire only for that purpose.

Mr. Bromley: Just a minute. I move to strike out the answer on the ground that it is hearsay.

*Benjamin Karpman—for Post Office—Direct.*

Chairman Myers: I take it that that is what they told him.

4273

Objection overruled.

Mr. O'Brien: He questioned them about their basic reactions. This was what they told him all through these cases.

Chairman Myers: Objection overruled.

*By Mr. O'Brien:*

Q. Did you at my request examine the January through November issues of Esquire magazine for 1943, Dr. Karpman? A. I have.

4274

Q. Have you specifically examined various items marked and listed on the covers of such magazines? A. I have.

Q. Dr. Karpman, I show you an exhibit in this case marked Post Office Exhibit No. 1, being the January, 1943 issue of Esquire magazine, and ask you to examine it. A. Well, I have examined the—

Q. Just a moment. I want to ask you some questions. You have already examined this, have you not? A. I have.

Q. You have already examined a copy of the January, 1943 issue? A. Yes.

Q. I want you to turn to the so-called Varga calendar in there which begins on page— A. 97.

4275

Q. 97—and look at the twelve pictures in the calendar for the months of January through December. A. Yes.

Q. Doctor, will you state to the Board whether or not the ordinary normal person examining or looking at those pictures would obtain any sexual reaction therefrom or any stimulus of a sexual character? A. I would say that by and large they will.

*Benjamin Karpman—for Post Office—Direct.*

4276 Q. All right. Turn to the February picture. Will you explain to the Board why you think, for example, that that February picture would arouse sex stimulus in the mind of the beholder? A. Because it accentuates what we call in psychoanalysis the erogenous zones. Erogenous zones are zones of the body that have a greater sexual stimulating value than other parts of the body.

Q. In this case, Doctor, you notice that the woman is shown with her back toward you. A. That is right.

4277 Q. With her face not looking toward you. A. That is right, but the thing that attracted my attention, and I imagine that would attract the attention of almost any normal individual, is the prominent display of the buttocks. In fact, the poor woman seems to have nothing but buttocks.

Q. Well, let us turn to the March issue of the lady with a fan, with the ostrich plumes. A. Well, I would say that one of the best ways to produce sexual stimulation is to cover very lightly the part that is intended to make the appeal, by light feathering, and the breasts are just about covered. You can just see a little bit, and the buttocks are also covered but it attracts attention that way.

4278 Q. Now, have you anything to say about the parts of the body that are visible? A. I beg your pardon?

Q. Have you any comment to make upon the parts of this picture which show these visible parts, the flesh of the body? A. It is physically stimulating.

Q. Let us turn to April, on the next page, and May. What can you say about those two pictures, if anything, Doctor? A. Here again you have those erogenous zones very nicely appealed to. You see the breast here, you see the buttocks, you can let your imagination run as to what is in between the legs, and then there is the leg.

Q. The May picture—

*Benjamin Karpman—for Post Office—Direct.*

Mr. Bromley: May we have the answer read?  
We don't always hear the doctor.

4279

(Record read.)

*By Mr. O'Brien:*

Q. Don't you notice, Doctor, that those women have some clothes on? What effect does that have on the sexual appeal of the pictures? A. The main idea is this, the human eye is a very peculiar thing, it only notices that which it wants to notice. It doesn't notice clothes.

Q. Take the May girl. She has clothes on, doesn't she, Doctor? A. I don't see very much. The only part that would seem to have clothes would be in the upper thigh, through the buttocks, up to the navel; the chest and the back are bare, and the thighs from below down to the legs are bare.

4280

Q. What can you say about the May picture which in your opinion would incite sexual thoughts in the normal mind? A. I will put it this way, that it would create an undercurrent of sexual tension in the reader, and I would like to examine the reader in whom it does not create such a sexual tension.

Q. Doctor, will you turn to the June picture in the same issue? A. It seems to me that they are all about the same thing. You got about four erogenous zones, that is, parts of the body that are particularly selected through cultural civilization to appeal sexually, and in one form or another they are displayed.

4281

Here it is the breast, or it is the buttocks, or it is the navel, or it is the back, but by producing a variety of the combinations you practically have the same identical thing



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4282

in all the pictures; not only Esquire but Film Fun and everywhere else, but I am not concerned with everywhere else.

Q. I want you to look at each picture from July on through December and tell us if your testimony is the same with respect to all of them. A. Now, in the July picture the breasts aren't displayed, the legs aren't as shapely, but the buttocks are very prominent.

In the August you have almost all of them shown; the breasts are outlined.

4283

Q. What have you to say about the pose of the body in the August and September pictures? A. Well, I would say that the pose is also physically stimulating. It is not a pose that is ordinarily assumed by a woman in daily life.

Q. How about the pose for the October picture, Doctor, and the picture itself, as to whether it is stimulating or not sexually? A. I think it definitely does. It is probably the most lurid of all. The breasts and through the buttocks are marked in red, and red is known to be a symbol of passion.

Q. You think that this would arouse lascivious ideas or desires? A. I think it would. If it doesn't, then the artist failed in his purpose.

4284

Mr. Bromley: I move to strike it out on the ground that it is a conclusion.

Mr. O'Brien: I will agree.

Chairman Myers: Strike it out.

*By Mr. O'Brien:*

Q. Doctor, will you turn to page 6 of the January issue?

A. Six?

Q. Page 6.

*Benjamin Karpman—for Post Office—Direct.*

Q. Will you direct your attention to that item in there entitled "Shor Nuff" at the center of the page? A. Yes.

Q. Have you read that, Doctor? A. Yes, I have read it.

Q. Will you state whether or not you think there is anything sexually stimulating or crude in that? A. I can't find very much in the editorial as a whole, but the first sentence which says: "Sandwiching good advice between its spicy cartoons," strikes me to give the impression that is just the opposite. It gives spicy cartoons sandwiched between good advice.

In other words, I get an impression that the spicy cartoons are probably the essential thing.

Q. What does this item down at the bottom, Doctor, mean to you, this item about juking? Is there any sexual implication there? A. You mean, "Comes it then breeding"?

Q. At the bottom of the left-hand column and also item 7 in the right-hand column. A. I didn't see anything about that that is striking. I didn't see anything particularly bad about it, about the breeding part.

Q. All right. Turn to page 83, the "Star and Garter Blues." A. Page 83?

Q. Yes. A. Oh, yes.

Q. Doctor, have you ever made inquiry among your patients as to their interest in burlesque? A. I do not make inquiries. The statements come out spontaneously as a part—

Q. What do they tell you about burlesque? A. I would say that there are certain patients who are habitués of burlesque. They have a yearly seat regularly.

I recall one fellow, a pyromaniac who set a number of furniture houses on fire some years ago. He used to have a seat at the Gayety every week. He was highly impotent

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4288

and incompetent in sexual relations with women and with him, going to a burlesque was a vicarious escape by which he could satisfy himself that way and I might add—this is not nice—that going to these shows would lead later to masturbation activities.

Q. What is a voyeur? A. A voyeur is an individual who derives particular, almost specific sexual satisfaction from watching sexual activities of others.

4289

I had a case in the hospital of a man who used to plant himself every night at a different apartment house on a fire escape with a magnifying glass and would watch what was going on in the apartment house on the opposite side. He did it for a considerable time, until he had exhausted all the apartment houses in Washington.

Whereupon, he took to exhibitionism. Exhibitionism and voyeurism go together.

4290

Q. How is voyeurism related, if at all, to a desire to see leg shows or pictures relating to leg shows? A. Because the individual gets satisfaction in a vicarious way by merely observing the sexual part but without utilizing this sexual part to his personal satisfaction. In other words, he gets sensory stimulation which is almost enough to satisfy him. That bespeaks an abnormal character because a normal person is not satisfied by the sensory stimulation but must complete the biological act.

Q. Do you see any connection between these displays in the Varga calendar and voyeurism? A. I think so. I would look upon people who are particularly attracted to the Varga girls and similar things as essentially voyeurs.

One cannot be arrested for looking at a Varga girl, but one can be arrested for looking at apartment houses.

Q. Turn to page 123. A. Yes.

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Q. Do you notice the letters there addressed to "Dear Doctor Diddle"? A. Yes, sir.

4291

Q. Will you state to the Board what you understand the meaning of that word to be, "Dear Doctor Diddle"? A. So far as I know, the word "diddle" is used to describe the preliminaries of sexual play, starting with loving, caressing, necking, petting, teasing, touching, until up to the point of reaching for the actual intercourse.

In other words, what we psychoanalysts call preliminary or fore-pleasure activities.

Q. In the last column there, the right-hand column of page 123, is the item "Dear Doctor Diddle", and it reads:

4292

"I am a beautiful brunet but I have a serious problem—every time I take a bath I blush. What shall I do? \* \* \* Twenty.

"Dear Twenty: Before you undress, put on a blindfold."

What connotation, if any, does that joke have for you, Doctor? A. I would say it is pretty hard to figure out what the man really means by that except that in some way or other it leaves indirectly the impression of some sexual stimulation.

Why should a woman who undresses herself blush? The average woman, you might say, is in love with her body. She glorifies her body.

4293

Perhaps this is one of the reasons why so many women buy a magazine like Esquire. It is supposed to be for men. They see in it what looks to them like a glorification of the female body.

Why a woman should blush looking at her body, I don't understand.

Q. What does it bring to the mind of the male reader, since this is a magazine for men? A. He is trying to

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4294 imagine her taking a bath, imagine how she is in the nude, but I don't believe that he will blush. I mean, the man who imagines.

Q. Now, about the use of the word "Doctor Diddle" in connection with this word picture of a nude? Does that have any sexual significance there? A. I don't see it.

Q. You don't see it? A. I don't see it, but then I am only one man.

Q. Doctor, I hand you Post Office Department Exhibit No. 2, which is the February, 1943, issue of Esquire, and call your attention to the Varga girl picture in this issue. I think it is page 34.

4295 Would you tell the Board, Doctor, whether or not you consider this picture of the Varga girl, with the accompanying verse "Song for a Soldier", sexually stimulating? A. They are almost monotonously the same. You see again the outline of the breast, the navel, the buttocks, the legs, and again the breast, the navel, the buttocks, the legs. It is just the same, just a variation on one theme.

Q. Does this article of wearing apparel that is shown in the picture enter into any modification of the answer? A. What is that?

Q. This nightgown, or whatever it is she is wearing. A. I think the nightgown reveals more than it conceals.

4296 Q. You don't think it would prevent—or do you think it would prevent the picture from arousing a sexual stimulation? A. The human mind is so constituted it is usually not attracted by something concrete. If a little bit is left for suggestion it attracts more. Put some bit of drapery over the leg there through which you can see the outline of the leg and for some reason it produces more stimulation than if the leg were completely naked. Put a very thin piece of silk over the breast through which you can



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see the outline and the human mind, for some perverted reason, will conceive it a better stimulation than if the breast were entirely naked.

4297

Q. Now, Doctor, turn to page 65 of the same magazine. the cartoon with the Oriental or Turkish gentleman and the girl with the caption: "What am I bid for this 100 pounds of sugar."

What would you say, Doctor, as to what this— A. The woman here is a chattel that can be sold and be made usable by the owner in any way he wants. How to imagine what the owner would do with an attractive woman who is again showing the navel and the breast and so on—

4298

Q. Do you think it is a sexual connotation? A. I would say it would create an undercurrent of sexual tension. What the fellow will do with it, I don't know.

Q. In other words, that undercurrent might not lead to an overt act? A. It might not. I would not be surprised if it does not.

Q. He might forget all about it? A. He might take the next picture.

Q. Doctor, will you turn, please, to page 77? A. I saw that picture.

Q. This is an article, "Home Sweet Ruby Street", and the picture on page 77. A. Yes, I saw that article, I saw the picture. I put my eye-glasses on it so that it was magnified. I can't see very much in that.

4299

Q. Did you read the story, Doctor? A. I read some of it, not all of it.

Q. I call your attention specifically, Doctor, to page 77, the last paragraph at the bottom of the first column. A. The first or the middle column?

Q. The first column on page 77, the left-hand column, and about the seventh or eighth paragraph of the center column beginning:

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4300 "It was not the response Mrs. Finn had hoped for and left her at rather loose ends." A. I remember reading that. I don't see much in that.

Q. Do you notice that the picture depicts two young Negroes in the act of dressing or undressing, and the male in the front is winking at the woman seated on the chair?

A. Yes.

Q. As he puts his clothes on? A. I don't see much in it. After all, Negroes have a right to dress and undress if they want to.

Q. The fact that this illiterate woman here shown seated in the picture could be embarrassed by what is going on in front of her, indicates this must be something of a lascivious, sexual occurrence, doesn't it? A. I don't know. Morality is not in itself dependent upon literacy. Many illiterate people may be very moral. The fact that she is illiterate and embarrassed doesn't suggest anything in particular to me.

Q. All right, Doctor, turn to page 95. Have you read this article on page 95 about "The Unsinkable Sailor"? A. Yes, I read some of it.

Q. And at the top of the right-hand column, the last column, page 95, there is an item— A. You mean beginning with "There is a new secretary in the union hall"?

4302 Q. Yes. A. Well, I would say it is mildly suggestive because it is very difficult to find any other interpretation for the word "boom" except a sexual connotation.

Q. Now, in this article also did you read about the incident of the urine jar being placed in the safe? A. That is in the third column, "What kind of safe have you?"

Q. Are there any neurotic manifestations which concentrate more or less upon excretions? A. Yes.

Q. What are the names? A. Coprophilia and urolagnia.

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You sometimes find, even in the Post Office Department, you sometimes find people sending fecal matter through the mail. I remember there was a case like that some years ago.

4303

Q. Would you say that this item here has any what you might call direct relationship to these neuroses similar to what the Varga girls have as depicted in the magazine?

A. I mean the suggestion is here that he is carrying some matter and I suppose it is left to the imagination of the reader to think what he wants to think. I don't think it is very dirty, but it is there, no doubt about it.

Q. Do you think it is filthy? A. I don't know. You take a bottle of urine to the doctor for examination. I wouldn't call it filthy, but if it gives a lurid description of it and makes a particular impression upon the reader's mind, then it becomes filthy. I am not sure just what impression it will make upon the reader's mind. Some, no doubt. Some will think of it in terms of filth and some will not, but the opportunity is there.

4304

Q. In other words, if the mind is susceptible to the interpretation of filth as in the words you gave— A. Coprophilia and urolagnia.

Q. (Continuing): Then this would be matter that would furnish sexual stimulation? A. That is right. That would be material that would stimulate.

4305

Q. That would furnish some material that would be suggestive? A. That is right.

Q. Now, coming back to the expression on page 95, "lower the boom on you, sister," you say that has a sexual connotation in your mind? A. I don't know whether it could be, just what would anybody say. What does lowering the boom mean? When a fellow almost jumps on the back of the woman and says "How's chances to lower the boom on you, sister?" what else does it mean?

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4306 Q. And then it goes on: "The girl jumped up in terror and ran screaming from the room". A. Yes, and what else could it mean? Perhaps somebody else would interpret it differently. I would be glad to hear it.

Q. You mean that lowering the boom on you, sister, you would interpret that as the sailor making an improper proposal of sexual connotation? A. Something of this kind. It is hard to say just what he meant, because I never came across a sentence like "lowering the boom" and I have a dictionary of pornography with all sorts of pornographic words.

4307 Q. What does it mean when it says: "The girl jumped up in terror and ran screaming from the room"? A. Well, that is not necessarily to say that a man may jump on her or that she is terrified because he may want to attack her physically, not necessarily sexually. That alone I wouldn't interpret that way, but as I take the thing as a whole, the whole paragraph, I get the impression that some sexual connotation is meant. I wouldn't swear to it because there may be some other interpretation.

Mr. Bromley: Don't you see that it is explained right at the end of the paragraph there, right in front of you.

4308 The Witness: How is that explained?

Mr. O'Brien: Now, let us not get into cross examination at this time.

Mr. Bromley: I just want to help him.

Mr. O'Brien: I know that.

Chairman Myers: Suppose we take a recess for ten minutes.

(Whereupon, a brief recess was taken.)

*Benjamin Karpman—for Post Office—Direct.*

*By Mr. O'Brien:*

4309

Q. Doctor, I hand you Post Office Department Exhibit No. 3, or a copy thereof, being the March, 1943, issue of Esquire, and call your attention to page 9, the Thorne Smith advertisement: "Thorne Smith's three wittiest, most ribald novels". Also the descriptive text under the caption: "America's one and only Rabelaisian humorist". A. Yes.

Q. And the pen and ink drawing in the lower left of this text? A. Yes.

Q. Showing a man and a woman in the nude apparently. Will you state, Doctor, what, if any, sexual appeal is obtained from this picture and text with respect to these Thorne Smith novels? A. I would say that if they hadn't put in the word "ribald", if they hadn't put in the sentence: "America's one and only Rabelaisian humorist", and they hadn't put the picture in, I don't think they would sell very many copies.

4310

The advertisement makes the appeal basically on the obscene part of it. The fact that he is Rabelaisian, the fact that he is ribald, the fact that the woman is nude.

Q. What is the effect of the picture showing the man with the woman in the nude and the man holding out what appears to be a bathing suit? A. Well, it looks as if he is very bashful. He tells her that "you had better dress up, you don't look so good nude".

4311

Q. Does this drawing which shows the woman apparently naked on a bathing beach have any sexual relationship or voyeurism or exhibitionism? A. I think so. These are the things that appeal to the voyeur type of individual, the nudity.



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4312 Q. The idea portrayed is that of sexual stimulation? The situation portrayed has a sexual stimulus? A. I think it arouses an undercurrent of some sexual tension.

Q. Now, Doctor, I just asked you questions about voyeurism or exhibitionism. A. Yes.

Q. Is it true, Doctor, or is it not true that there is a certain amount of both tendencies in most normal people?

A. Yes, there is.

Q. So, in the picture and text in this advertisement for the average normal individual, so far as you think of it in ordinary life— A. Except that it is—

4313 Q. (Continuing): —it has sexual stimulus? A. Except that it is considerably exaggerated. You don't have to create a voyeur appeal by putting up a nude woman. If you put up a pretty, dressed woman, it also has a voyeur appeal, but this is going to the extreme.

Q. The idea of the nude woman among the crowd might stimulate the idea that the beholder might not be one of the crowd by reading the book? A. I don't know whether it means that, but it is to create an impression in the reader's mind that this would be a good book to buy because if it has one picture like that perhaps it has many more pictures like this.

Q. Doctor, turn to page 36. A. 36?

4314 Q. Yes. A. Yes.

Q. The picture of the Varga girl again. A. Well, it is the same pattern.

Q. The same pattern? A. Yes.

Q. Will you state whether or not this picture on page 36 of the March issue has any sexual appeal or will stimulate— A. I think so.

Q. (Continuing): —neurotic ideas? A. I think so.

Q. In the normal mind? A. I don't know how long these

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neurotic ideas would last. They would last in the imagination, or be in the imagination, but here is the breast and the navel and the buttock and the shapely leg. What else can it do to an individual?

4315

Q. Now, page 49, Doctor. A. 49?

Q. Yes. That is one of those cartoon pages. We have a number of them. Showing the two soldiers and the girl and the text: "I wonder how the Sultan knew this was my birthday". Have you found it? A. Yes.

Q. Does this picture, in your opinion, have any sexual connotation or stimulation to the normal mind? A. I think taken as a whole it has some slight connotation. The expression of glee on the face of the man in the middle.

4316

Q. You say that was glee? A. Glee-e.

Q. What, Doctor, do you relate the glee to? A. Anticipating the sexual pleasure with her.

Q. With the girl on the left? A. Yes.

Q. I hand you, Doctor, Post Office Department Exhibit No. 4, the April issue of Esquire. A. What page? You don't have to tell me the page, I see it.

Q. I direct your attention to the cover of this magazine. Do you have any comments to make with respect to that? A. On the cover?

Q. Yes. A. No. It is interesting that the two, what do you call them, Esky girls, they are very small, their breasts are very conspicuous, but I don't see very much there.

4317

Q. Doctor, is there any special sexual appeal in the malformed or large homely breasts? A. Well, breasts are supposed to be the zone of sexual attraction to men. Now, men differ a great deal; some men are very much attracted to a point where they will not choose a woman regardless of what other appeal she may have if she hasn't got nice breasts. I have known men to leave perfectly attractive

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4318 maids because they discovered that the woman didn't have much of a breast. Some men are particularly attracted to that.

Q. What is the general situation with respect to sex attraction of breasts? A. I think it makes a definite sexual appeal to many men.

Q. On page 38, Doctor, of the April issue? A. Yes.

Q. What comment have you to make about whether or not this Varga girl has a sexual stimulating appeal to the normal person? A. I think it has.

4319 Q. Why, Doctor? A. The breasts are definitely outlined, the buttocks are prominent, I see one buttock, the slit between the leg and the shape of the leg.

Q. Doctor, have you read the verse which accompanies the Varga girl in the April issue, "Peace, It's Wonderful!"? A. I think I have.

Q. Has that any sexual connotation, Doctor, in your opinion? A. Some, slight.

Q. What slight sexual connotation has it got? A. Well, it suggests that he might want to rest up, but in the presence of this girl he is likely to be very much alert and awake.

Q. Does it indicate whether or not he is going to be awake and about the house or in bed? A. The implication is in bed.

4320 Q. Doctor, turn to page 60, the article entitled "The Court of Lost Ladies." Have you read this article, Doctor? A. Some of it. I must confess I do not have much patience to read these articles.

Q. Well, what, if any, sexual stimulus do you find in this article? A. Just a usual thing. You see three women and six legs.

Q. What about the article itself? A. I didn't get much out of that. The title is very suggestive.

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Q. Does the fact that this article deals with the court in which prostitutes are tried in New York. I believe it is, and the description of the proceedings and of the women who were brought in there, constitute, in your opinion, any effective show, shall we say, of mental prophylactic for the men who might be attracted to prostitutes? A. I think it just brings to mind what is a prostitute and what she does during the day and what she does at night and how she lives.

4321

Q. Would it cause the mind of the reader to dwell upon the fact that there is available, perhaps in the town where he is, women who are sexually commercial? A. It brings to the mind the fact that sexual outlets are immediately available to one who has the money to spend.

4322

Q. Now, Doctor, I hand you the next issue which is May, 1943, sir. A. Yes, sir.

Q. I call your attention to page 32, the article entitled "The Savage Beast In Us". A. I would say that these pictures are not so suggestive. They are just vulgar, just plain vulgar. I see no great advantage to presenting these pictures. They are displays in the commonest and roughest form, the breast, the navel, the slit, the legs—

Q. Doctor, as a matter of fact, would they or not attract certain types of minds—the scenes particularly of the can-can, or whatever this is on page 33, and the large fleshy woman on the right and the one on the left below her—do they have a special connotation, a sexual connotation, or not? A. I think it more vulgar. It is just plain vulgar with me. If a man were confronted in daily life with a woman of this type I don't think she would be sexually appealing to him. The whole thing is so vulgar, the display.

4323

Q. Do you think they are indecent as well as vulgar? A. I would say so.

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4324

Q. Doctor, did you read the article by Paul Gallico, "The Savage Beast In Us"? A. Some of it.

Q. What have you to say with respect to what effect this article would have upon the mind of the reader as to sexual stimulus? A. My personal impression is that the thing is so vulgar that it will almost revolt him sexually because the average man, even the common man, still wants a little bit of refinement in the woman that he seeks something that will give at least a facade of beauty to him.

Q. Now, Doctor, didn't you tell me that you considered this article sexually stimulating?

4325

Mr. Bromley: I don't think counsel ought either to lead him or to cross examine him.

Mr. O'Brien: I am not cross examining. I am trying to refresh his recollection.

Mr. Bromley: By suggesting the answers.

The Witness: I said it is not so much sexually stimulating as it is vulgar. It is more vulgar than sexually stimulating.

*By Mr. O'Brien:*

4326

Q. Turn to page 38, Doctor, the Varga girl again. A. I think it would arouse, as I say, an undercurrent of sexual tension. Again, there are the breasts—

Q. Is an undercurrent of sexual tension accompanied by an undercurrent of libidinous ideas?

Mr. Bromley: I object again to the form of the question on the ground that it is leading.

Mr. O'Brien: If you can lead him you can have him.



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The Witness: The average person does not realize that looking at this picture and getting the effect is undergoing several stages of development. First, you see the picture, the physical side, the breasts, the buttocks, the shapely leg. That stimulates the idea and through his experience Nature will let him picture situations in his mind. He may put himself in a situation where he would be alone with this kind of a girl. It creates sexual tension.

4327

Now, what he is going to do about it, I don't know.

Q. It could possibly lead to an overt sexual act, could it, Doctor? A. It might.

4328

Q. Doctor, turning to page 92 of the May issue of Esquire, showing the picture "Broadway for the Boys", or a picture from that show, together with the text under the caption: "The juke scene from The Eve of St. Mark", and I call your attention to the text: "These soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 per cent don't, 20 per cent do, and 60 per cent might."

What meaning does that text have with respect to sex matters, if any, Doctor? A. I suppose you can say 20 per cent eat a certain cereal and 20 per cent don't.

Q. 20 per cent what? A. 20 per cent eat a certain cereal and 20 per cent don't, and 60 per cent might perhaps, but the obvious interpretation would be that 20 per cent would be led to some sort of sexual activity, 20 per cent would not and 60 per cent might.

4329

Q. Did you say would have sexual activity? A. Might be led to sexual activity.

Q. What about the picture on page 92, on the left? A. It consists of two couples. The one on the left may belong

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4330

to the 20 per cent that might—that do, rather, and the one on the right is apparently unconcerned.

Q. Are you testifying, Doctor, that the couple on the left, the girl sitting on the man's lap— A. Yes.

Q. Are indulging in some sort of sex play of some kind? Is that your impression? A. In a very cryptic way, I don't think you can put your finger on it.

4331

Q. What about the girls' legs, Doctor, are they cryptic, too? A. They are displayed. The thing is so vague, you know, you can't put your finger on it. I have a feeling that the second man really would like to have the first girl on the lap and that the girl on the right is interested in the second man but he, unfortunately, is interested in the first girl. That is the impression of the picture.

Mr. Bromley: How do you work that out?

The Witness: You see, my mind works different from yours.

Mr. Bromley: I can see that.

*By Mr. O'Brien:*

4332

Q. Well, Doctor, let's come to the summer issue of June, 1943, and turn to page 34, the Varga girl. You will notice, Doctor, the left-hand corner of this page where it is unfolded, a poem captioned "Something for the Boys".

Does this portrayal of this girl in this position, as clad here, in connection with the caption or without it, have any sexual stimulation? A. I have never seen much ballet, but I have never seen a ballerina in this particular position.

Q. What do you think of this particular position? A. The position is sexually significant to me. Again, you have the breast, the back, the navel, the slit, the legs all over again.

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Q. Now, Doctor, the curve of this garment runs from the heel here over the thigh, does it not, down upon the mons? 4333

A. Down upon what?

Q. The mons veneris. A. No. The slit would lead to that.

Q. Are you looking at the same picture I am, Doctor? I am talking about the slit here. I am going to ask a question about this anatomy here. Does it completely cover that mons veneris region or the erogenous zone, as you call it? A. I would say from the picture it doesn't, although the implication is it—there is a little space here, but mons veneris is usually covered with hair if you will get a text-book on anatomy. I wouldn't look for anatomical accuracy in seeing the Varga pictures. 4334

Q. I don't believe you have answered my question yet, Doctor, whether or not you consider this picture stimulating sexually to the mind of the average reader? A. I think it would be. I think the position that the woman takes and the display of the various curves, is of a type that would arouse an undercurrent of sexual tension.

Q. What have you to say, Doctor, about the fact that she is covered over here with a dark, well-fitted garment? A. But you see the outline just the same. The outlines are visible.

Q. Do you think the appearance of the garment on this body lessens the sexually stimulating effect of the picture? 4335

A. No, it might even heighten it.

Q. Turn to the July issue, Doctor, 1943, page 76. Is there anything sexually stimulating about that picture? A. I wouldn't say about the other woman. I see the woman in the front apparently is Spanish and supposed to be a dancer. I would say that it would arouse an undercurrent of sexual tension which may be very fleeting or it may be more permanent.

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4336

Q. Would that undercurrent of sexual tension—does that mean it might arouse a desire for some sex experience? A. It might. I don't know how far it will go. It may stop right there and then or it might go on further.

Q. Now, page 146, Doctor, referring to the man-sized Eskey card ad, the girl lying on her face and the Varga girl playing cards, the two pictures just below the one I mentioned.

Is there any sex connotation or stimulus to be found in these pictures, Doctor? A. I don't find anything particularly in the upper one.

4337

Q. In which one? A. In the upper one here (indicating). There isn't very much here. I think this is vulgar.

Q. The second one? A. Yes.

Q. The one showing the girl lying on her face? A. Yes, the one of the girl lying on her face with some sort of flower or something attached to her nates.

Q. That is a glass hat covering her. A. It is?

Q. Covering her mid-section. A. See how things can be misunderstood.

Mr. Bromley: She has got it in the wrong place.  
Doctor.

The Witness: That is right.

4338

*By Mr. O'Brien:*

Q. Now, what about that picture, Doctor? A. I think it is vulgar.

Q. Do you think it has any sex stimulus, Doctor? A. Nothing particularly. I think there is more—too much vulgarity but the two lower pictures here, I would say—

Q. The fact that the figure is nude does not have any sex implications? A. You mean the two lower ones?

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Q. No, the middle one. A. I would say the vulgarity of it negatives the sexual aspect of it.

4339

Q. What are you going to say about the two other pictures, Doctor? A. The two other pictures are definitely suggestive.

Q. You say they are suggestive? A. Yes.

Q. In regard to what? A. They are sexually suggestive.

Q. Sexually suggestive? A. You see, again, you have here the breasts, the buttocks, the thighs, and the region of the navel.

Q. Referring now to the Varga playing card picture? A. Yes, the two.

4340

Q. The two last pictures on the bottom of page 146? A. Yes.

Q. Doctor, I hand you the August issue, page 38, the Varga girl. A. I would say that it is—

Q. Is there anything stimulating to the libido in this picture? A. Oh, we are talking about libido. You are borrowing a term that is used by psychoanalysts in the particular sense. I wouldn't use the term libido in the proper sense. This is our private property.

It does arouse a definite undercurrent of sexual tension which stimulates the imagination, producing pictures which vary with the type of individual, his background, his position in life, his age, a number of things. The same picture will produce, will have one picture on a young boy, will have a different picture on a young married man, and will have a different effect again on a married man who has established himself in life.

4341

Q. Well, about the average male, the average normal male? Would it have any sex stimulation for him? A. I find it difficult to talk about an average age. I would like to differ-



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4342

entiate by types, by position, by age, by attitudes. If you want to lump all of these together, I would say it has a definite sexual appeal, but the appeal will vary with the type of individual, with his position in society, his personal background, the type of bringing up that he has.

Q. The state of his health? A. I would say even that.

Q. For example, in the case of an average normal male individual who had passed the age of puberty, having a normal biological drive, what would you say the effect would be on him, assuming no outlet? A. Well, if you take a young adolescent, I don't think he will bother with that. He gets so many girls and doesn't have to—

4343

Q. You don't listen to my questions, Doctor.

Mr. Bromley: Wait a minute. Let us have the answer here; don't interrupt him in the middle of it.

Mr. O'Brien: I would like to have my questions answered.

Mr. Bromley: I object to interruptions of this sort.

Mr. O'Brien: I had assumed that he was beyond adolescence.

The Witness: Yes.

Mr. O'Brien: I want to have my question answered.

4344

The Witness: Well, that will depend, if he is a single man it will have one effect; if he is a married man it will have another effect. Some men like to run around a lot before they are married and then after they are married they will settle down. The very same man before marriage will look at this picture and it might appeal to him and the very same man ten years later having a family and children will look at it and say it is disgusting.

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A middle-aged man who has probably been disappointed in many things in life, this will probably appeal to him.

4345

On the other hand, the man 45 years of age who has a daughter 15 years of age who is beginning to be aware of her sexual problems and sexual attitudes, he will say "My goodness, are they putting in these journals these things? That is going to corrupt my little girl".

It all depends on the situation in life and different things. I admit to some men, to a number of men, it will be definitely stimulating.

4346

*By Mr. O'Brien:*

Q. What about the type of men I asked you in the first place? The young healthy male without a sexual outlet? For instance, the soldier, the highly repressed man in barracks or camp who has to assume a life of continence? A. It will have a double effect to different types of people. There are some soldiers who will look at this picture and they get nothing sexually stimulating; another will work it out at night in the form of emissions, and that will produce the outlet for the lack of women and different things.

On the other hand, there is another type of soldier who would not be satisfied with that, he would not be satisfied with nocturnal emissions, and it might stimulate him to the point where he might become aggressive and even leave camp A. W. O. L. in order to seek sexual satisfaction.

4347

I don't think you can classify all soldiers in one group.

Q. Turn to page 73, Doctor, the picture entitled "Mood for Red Hair". A. Is that the one (indicating)?

Q. No, sir; page 73. A. Yes. I don't know what to make

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4348 of that picture. I looked at it before. I saw it cited. I did not feel that it would arouse particular sexual tension. It might in some people, I don't know, I don't see it; nothing particularly here unless you look for it with a magnifying glass.

Q. Page 89, Doctor. A. There is something. Is that the one (indicating)?

Q. No, page 89, this picture of a woman seated on a man's neck.

Mr. Hassell: The "paste-your-face-here".

The Witness: Yes.

4349 By Mr. O'Brien:

Q. Does this picture on page 89, Doctor— A. Yes, I would say it is suggestive.

Q. Suggestive of what? A. It is sexually suggestive.

Q. Sexually suggestive? A. Yes. In my particular work there is some very small—a very small number of men who are addicted to a particular type of perversions, and to them—and I say again it is a very small number, the presence of a male head in the pubic region of a woman would be particularly sexually suggestive, but it wouldn't apply to the majority of men.

4350 Q. Is there any other type of individual that you think it would be sexually suggestive to? A. No.

Q. The general individual? A. Yes, a picture like that would appeal to what we call the baser emotions. Certainly, there is nothing very ennobling in that.

Q. Page 127, is there anything sexually stimulating about this picture on page 127 entitled "Hew to the line, Bertha, let the skirts fall where they may"? A. I would say it was suggestive anyway.

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Q. Suggestive sexually do you mean? A. Yes.

Q. Why? A. The raising of the leg. I don't know how it could have any other connotation. 4351

Q. Page 105, Doctor. The same issue, at the bottom of the right-hand corner. A. Yes.

Q. The picture of a sailor approaching land and another sailor is clasping the tree and the caption is: "Thank God, help at last", and the background has a number of— A. Savage women.

Q. Would this picture have any sexual connotation? A. I think it has a sexual connotation. I venture to say that probably a large number of people would probably not get it at all, they wouldn't understand that these are savage women, but for those that made an effort to understand, I think that it has a sexual connotation. 4352

Q. What does the caption: "Thank God, help at last" mean, Doctor? A. Well, it suggests—I don't know whether they can prove it—it suggests as if the poor man had had a sort of life of being a sexual servant to all the savage women with unlimited capacity for passion and the poor man is exhausted and he sees another sailor coming along and he says: "Thank God, help at last".

Q. Now, Doctor, page 144, third column. A. The top of the third column?

Q. The bottom of the third column. A. Yes. 4353

Q. "Once he had slapped a prostitute in Bordeaux who had persisted in keeping his cap, but that didn't count. He was amazed to find himself slapping his second woman.

"Dorothy began to cry loudly and headed out of the room. Dizzy and with the taste of blood in his mouth, he noticed how large the uniform made her behind look".

Have you anything to say about the use of the word "behind" in this passage, Doctor? A. Well, that simply is an-

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4354 other word for the nates or the buttocks, but the thing that attracted me is that this scene suggests sadism, or the sexual satisfaction that the man gets not from so-called normal relations but from inflicting pain on his partner, and this is really true to life in one sense because there are many men who go through life without realizing that they are sadists until one day they come in contact with a situation where they have to slap a woman and that seems to start a subterranean stimuli, and from there on they become sadists.

4355 It says here: "Once he had slapped a prostitute in Bordeaux who had persisted in keeping his cap, but that didn't count. He was amazed to find himself slapping his second woman."

Once he happened to slap one woman he will slap two, three, and four women because that arouses his sadistic tendencies.

Q. Now, let us get this straight. Does sadism have any relation to sex? A. Oh, yes. There are two things about it. Unfortunately, there is so much about psychoanalysis that has become popularized that the term sadism is used popularly to denote brutality. As a matter of fact, sadists as a group are not brutal and brutal men are not sadists.

4356 In a very restricted and narrow sense we use the word sadism to connote the type of man who is unable to get sexual satisfaction in a normal way, but is obliged to resort to violence with a partner who in turn cannot get sexual satisfaction unless violence is inflicted on him or her.

Q. Now, Doctor, leave sadism aside for the moment. What do you think of this passage here where after slapping the woman, he noticed "how large the uniform made her behind look". What connotation does that have? A. I don't find that sentence.



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Q. The bottom sentence in the third column. A. Yes. Well, it simply connotes—it brings the attention to her buttocks. "Behind" is simply another term for buttocks, as I understand it.

4357

Q. Does that have any sexual interest or indicate any sexual interest to you, Doctor? A. In the sense that buttocks are sometimes what are called an erogenous zone, sexually stimulating zone, it does.

Q. The September issue is the one I hand you, Doctor, and I call your attention to page 38, the Varga girl again. Does this picture have any sexual stimulus? A. Yes, I think it does. It is again the same thing. You have here an accentuation of the breasts, accentuation of the region in the navel, accentuation of the buttocks, the slit, the leg, the whole pose.

4358

I would say it would arouse an undercurrent of sexual tension.

Q. Doctor, I call your attention also in this picture to the expression on the model's face and the diary in her hand and the verse entitled "Military Secret." It reads:

"Now, no one can peek  
At this Book of the Weak—  
In wartime I have to be cagey,  
That boy in the Army  
Would certainly bar me  
If he knew I date a J. G.,  
That boy in the Navy  
Whose hair is so wavy,

4359

Would tear it right out at the roots  
If he found that I  
And a Leatherneck guy  
Were now in romantic cahoots!"

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4360 —What do you gather from the entire ensemble, Doctor, as to any sexual indecency? A. It means she is probably not true to her promise to the lieutenant (junior grade) and probably willing to drop him for the sake of a private in the Marines.

Q. Does it indicate anything else, Doctor, with respect to her promiscuity or otherwise? A. Not particularly. That depends a lot upon the imagination of the individual who looks at it. Some people have a very vivid imagination and some are awfully dull.

4361 Q. Would you say this picture here has a greater or less sexual stimulus than the Varga girls you have looked at? A. They vary among themselves. I would give her 100 per cent.

Q. Page 65, Doctor, that is the cartoon showing the lady from "Dale's Milk" with the caption, "Come back later, sweet—my wife hasn't left for the factory yet."

What, if any, connotations do you obtain from this picture, Doctor? A. Well, I suppose they have a sort of clandestine affair which is kept away from the man's wife, and he tells her to go away for a while and come back later when the wife is gone, the implication being that when the wife has gone to work in the factory that they can—well, the sky is the limit.

4362 Q. They can commit adultery if they like. Is that it? A. Is that what you call it legally—they will do something anyway.

Q. Does this situation portrayed here, together with the idea implied by the caption, imply in your opinion any sexual stimulus? A. You mean this picture as it is?

Q. Yes. A. Oh, yes. It suggests they are going to indulge in something and, of course, it stimulates the imagination of the reader. That is, he might say to himself, "I wish I were in his boots."

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Q. Or apron? A. Or he may say, "I wouldn't want to take one like that. I have something better than that."

4363

At any rate, it will set him thinking.

Q. Sexually? A. Oh, yes. It is also interesting that in popular language the milkman has become proverbial as the man who is likely to seduce the housewife. Here, on account of the war situation, women are taking the place of men in many respects, and here is a milkwoman who is performing the same function that the milkman performed before the war.

Q. Turn to page 102, Doctor. It shows a man emerging from a group of trees and a girl lying on the beach in shorts, with the caption, "Ain't it a dahn shame? Plenty of water on this island, plenty of food, and now I get hallucinations!"

4364

Is there any sexual connotations or sexual idea stimulated by this picture? A. The only sexual connotation I see is that the man is virtually naked and the girl is almost so. What other implications there are, I don't see.

Q. Does the position of the girl and her attire and anatomy have any relation to the situation? A. She is lying in a very—I would say—sexually receptive position.

Q. Will you state, Doctor, whether or not this picture, in your opinion, would arouse any thoughts of sex in the minds of the average readers, males? A. It will bring to one's mind the picture of the sexual situation where everything is ready for the consummation of the act, but whether the act would be consummated or not, the picture doesn't imply.

4365

Q. Would your mind necessarily stop at that point or would it go on to an imaginary consummation? A. I don't know. You have two people here on an island, not a soul around there, it is a nice, bright day—almost anything can happen.

Q. Doctor, I hand you the October 1943 issue of Esquire.

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4366

Turn to page 37, please, the cartoon in the lower right-hand corner. Do you notice the picture of the girl looking at the tattooed figure on the man's shoulder muscle? A. Yes. I looked at that picture before. I think one has to strain his imagination really to get a sexual stimulation out of that. It is hard to portray in a picture shimmying, especially shimmying of a tattoo mark. I can't see much in it.

Q. What would you say was the purpose of the man making the figure shake for the girl? A. Well, he thought this might stimulate an otherwise resistant female.

4367

Q. Resistant to what? A. I mean if she is resistant to his advances, this may produce an additional stimulation.

Q. And so eliminate the resistance. Is that your idea? A. I suppose so. But the poor man, if he can't get anything better than that—

Q. Page 43, "Torches at Midnight," the Varga girl. Does this picture have any sexual stimulus, in your opinion, Doctor? A. I don't know what else it has. Again, you have the breasts prominently displayed, the torso, the navel, the slit, the buttocks, the leg, the same thing all over again.

Mr. O'Brien: May I go off the record a moment?  
Chairman Myers: Yes.

4368

(Discussion off the record.)

The Witness: I say that as a rule, not on this particular occasion: I qualified my statement by saying that it might stimulate one type of person but may not stimulate another type. It may stimulate the same person differently at different ages of his life.

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*By Mr. O'Brien:*

4369

**Q.** And might not stimulate a homosexual at all? **A.** That is right.

**Q.** But for those who have a sexual ability would you say it is stimulating? **A.** Yes, definitely.

**Q.** Now, does the answer which you have given take into consideration the fact that this girl has some kind of garment displayed or indicated on her body? **A.** She hasn't got very much.

**Q.** Does it take into consideration the fact that she is lying on her back with her feet up in the air, partly? **A.** Part of the way. The slim covering that she has is more likely to arouse or create sexual stimulation than if you show her completely naked, because, as I said before on another occasion, the human mind somehow is attracted when he has to do a little bit of reflecting, when he has to think and visualize and imagine things. As he looks at the thin covering he pictures what is behind it.

4370

**Q.** What importance has the pose, if any, in this picture? **A.** I suppose it has some. It didn't particularly attract my attention. I think the picture as a whole, not individual parts but taken as a whole, is definitely likely to arouse an undercurrent of sexual tension.

**Q.** Doctor, I call your attention to page 93 of the October issue of Esquire. In the first column there is a cartoon showing three men at a table and just below that is a joke or anecdote which reads:

4371

"A Pullman porter who had started out on an all-night run had his trip canceled. Returning home unexpectedly, he took a look around the house, then took out his razor and stropped it vigorously.

" 'What you doin', Sam?' asked his wife.



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4372

"'If dem shoes stickin' out from under the bed ain't got no feet in 'em. Ah is gonna shave.'"

What, if any, sexual connotation does that have, Doctor?

A. It implies that he probably thinks there is a man hiding himself under the bed and that his wife is unfaithful to him and that he is prepared to take his revenge.

Q. Would this joke be suggestive or not suggestive of illicit sex relations? A. It suggests infidelity on the part of the woman, and jealousy and revenge on the part of the man, and it suggests some sex, but I question very much whether the reader of this joke would go so far as to try to visualize the woman and the man under the bed in any form of sexual activity.

4373

Q. Now, Doctor, turn to page 93, the last column, and the second joke reads:

"'What does f-e-e-t spell, Johnny?' asked the teacher. Johnny didn't know.

"'What,' persisted the teacher, 'is it that a cow has four of and I have only two?'

"Johnny's answer was as surprising as it was unexpected."

A. Well, probably Johnny didn't catch the idea of the—

Q. Of what? A. Of the feet, and probably thought of the breasts. If Johnny was a little older he probably would have thought of something else.

4374

Q. Does this joke have any sex connotation? A. It doesn't strike me. Johnny is too young to know those things.

Q. What do you suppose was Johnny's answer? A. I don't know. I could tell you what I would have said in Johnny's place.

Q. Well, tell us what you would have said in Johnny's place, please? A. I probably, in my innocence, would have thought of the breasts. I would not have thought of anything else.

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Q. I hand you the November 1943 issue of Esquire, Doctor, and call your attention to page 46. "Virtue Triumphs!" is the name of the verse and it is accompanied by an illustration of the girl by Varga. The verse reads:

4375

"The look of alarm  
On this bundle of charm  
May set up some foolish illusions.

Her state of attire  
May also inspire  
Some rather ignoble conclusions.

Perhaps you've surmised  
That the gal's been surprised  
By a villainous sort of a louse—

4376

But, brother, you're wrong,  
You're been wrong right along—  
It wasn't a wolf . . . but a mouse!"

What is your statement, Doctor, as to this picture and verse with respect to any sexual obscenity. A. I would say that the picture is much more suggestive by itself than with the verse. The verse almost spoils it.

Q. Doctor, would you kindly explain what is spoiled?

A. As I understand the purpose or what you call the function of presenting the Varga girl, is to make some sort of a sexual appeal, and she has got all there is to be had. She is dressed very thinly, attired very thinly, the various parts of the body are rather prominent, but I don't get much out of the verse here, it doesn't suggest much to me.

4377

Q. Now, Doctor, if I interpret this poem to mean, as I read down to the last line, that this girl's face expresses alarm, shall we say, because she has been spied on, by a

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4378

wolf, that is to say, a human wolf, a man having some desire for further relations with her, would that interpretation of the poem in conjunction with this picture have any sexual stimulating effect? A. Well, I might say that for once the Varga girl has a certain amount of modesty on her and doesn't want anybody to look at her. That is the first instance I have encountered.

4379

Q. I wasn't thinking about that, Doctor, but the Peeping Tom implication of the poem. Does that have any relation to voyeurism? A. There is no voyeurism. The whole thing is very much implied. It might be implicit that she is afraid that she has been spied on by somebody and she wouldn't feel very comfortable about it, but I don't see that you can draw a direct conclusion that one could be sexually stimulated by that particular verse. . .

Mr. Hassell: Mr. Chairman, while there is a pause here, Dr. Karpman's secretary wants him to call a number before 5:00 o'clock and the secretary also wants him to call his wife.

Would you mind adjourning a little before 5:00?

Chairman Myers: All right, we will adjourn until 9:30 tomorrow.

4380

The Witness: Thank you very much.

(Whereupon, at 4:50 o'clock p. m., the hearing was adjourned until Wednesday, November 3, 1943, at 9:30 o'clock a. m.)

# **HEARING OF NOVEMBER 3, 1943.**

4381

## **PROCEEDINGS RESUMED.**

Chairman Myers: All right, Mr. O'Brien, Proceed.

BENJAMIN KARPMAN, a witness called by and on behalf of the Post Office Department, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination by Mr. O'Brien (Continued):*

Q. Referring this morning to the same copy of Esquire, Doctor, that you had yesterday when we recessed with the November, 1943, issue, the next item—

4382

Mr. Cargill: May we ask that you speak loud enough for us to hear?

Mr. O'Brien: Am I speaking loudly enough?

Mr. Cargill: No. That is the reason for the difficulty in hearing, Mr. O'Brien.

Mr. O'Brien: All right, sir; I will speak louder.

*By Mr. O'Brien:*

4383

Q. Doctor, referring to the November issue, page 60, photographic illustration on page 60 and the descriptive matter in the boxed section in the lower left-hand corner, page 61, the Esquire canteen girls from the "Folies Bergere." What is your opinion, Doctor, as to whether or not this picture is sexually stimulating to the average person? A. I think it definitely is. The effect of it is that the geometric proportion of the women is increased by the arithmetic proportion

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4384 of the clothes. It is very alluring, very suggestive, definitely stimulating sexually.

Q. Would you say, Doctor, that the amount of clothing exhibited on these girls has anything to do with your answer? A. Yes, it is. There isn't very much clothing to begin with and what little there is is put up in such a way as to suggest what is behind the clothing. For instance, the breasts, the buttocks, the thigh.

Q. Turn to page 66, Doctor, the cartoon with the caption "It's no use, Sarg, we are outnumbered. Yipppeeee!"

4385 Will you state, Doctor, whether or not, in your opinion, this stimulates any sexual ideas? A. Well, the picture definitely suggests a perfect willingness on the part of the soldiers to be captured, to be enslaved and pressed into service by the presumably attractive young women. You can see the expression of glee on their faces, with the idea being forced into slavery under such circumstances.

Q. Well, has this picture, in your judgment and opinion, any sexual connotation? A. I think it does.

Q. What? A. Well, they like to be put in the service of these women and be forced into, as it were, against their will, into some sort of sexual activity. I don't think much against their will.

4386 Q. Page 77, Doctor—no, turn back to page 73, this picture of a woman on page 73, with the title on page 72 "Golden Mould", "Julie London, one of the nebulae of Hollywood."

Will you state whether or not in your opinion that picture is sexually stimulating? A. I don't see much in there—it may be a bit suggestive with her leg sticking out. Fortunately, every woman has a leg. I don't see much there.

Q. All right. Turn to page 77. That is the page bearing the caption: "First Nights and Passing Judgments". The



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first column is a reference in the second paragraph to "An old-time St. Louis sporting house." A. Oh, yes.

Q. Are you familiar with that term, Doctor? In the first column, Doctor. A. The first column?

Q. That is right, the left-hand column, beginning with the word "By" and going down to the second paragraph. Half way in that paragraph is the expression. A. The term sporting house, of course, is another name for brothel or bawdy house, and I wouldn't doubt it brings to the reader's mind a picture of the type of house it is, what is likely to go on there, the type of women you consort with there, the purpose for which one comes there.

Q. Now, at the top of the third column, item No. 10, "young floozie characters wearing short skirts that tightly embrace their hindparts and who interpret their roles by crossing their legs three inches above the knees and dangling red hand-bags big enough to hold the books of the Corn Exchange Bank." A. I think the description is rather suggestive and, of course, the individual reading that will try to picture in his mind the hindparts, women crossing their legs three inches above their knees, and dangling their hand-bags, and so on. It brings up, I would say, a lascivious picture to the mind.

Q. At the top of the right-hand column on the same page, Doctor— A. 21?

Q. 21 is the number. Will you read that, please?

"Den don't gimme any a dat crap! What da hell did you tink I wus gonna do? Hang around dis dump waitin fer Santa Claus tuh take care a me, fer Chris sâke. Looka you! What a yuh got? Six years yuh went tuh college and what da hell a yuh got? A lousy handout a thoity bucks a week! Not fer me! Yeah, I got mine, but I took it." A. I don't see much in there. Of course, the word "crap" can be

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4390 interpreted in two ways. I think what the man really meant here was in the sense of baloney, nonsense. Don't hand me that stuff. Don't hand me that nonsense, don't hand me that baloney. I don't see anything there.

Q. You have read all of these articles, Doctor, have you?

A. Yes.

Q. Have you any general statement, Doctor— A. Just as much as I could stand.

Q. What? A. Just as much as I could stand.

Mr. O'Brien: Strike the question.

4391 *By Mr. O'Brien:*

Q. Turn to page 89, please. That is a picture which bears a caption on page 88, lower right-hand corner of that page: "Stagedoor Esquire. Backstage at the Greatest Show on Earth". This is a picture showing what appears to be the interior of a tent or in a circus. A. I would say that—

Q. Showing two or three girls or at least two girls and a man. What is your opinion as to this picture, Doctor, with regard to it being sexually stimulating? A. I would say that there is—that they are very alluringly dressed, 4392 temptingly dressed.

Q. In what sense, Doctor? A. In the sexual sense.

Q. The sexual sense? A. Sexually stimulating, no doubt about it. You see the outline of the breasts, the buttocks, the thigh, the slit, the legs. Much more in the one on the right side than on the left, although the one on the left isn't missing much either.

Q. Isn't what, Doctor? A. Isn't missing much either.

Q. Will you state whether or not, in your opinion, this

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picture, would stimulate thoughts of erotic or sexual desire or of a sexual nature? A. I think so. I think that is essentially the purpose of it.

4393

Q. Page 94, Doctor, left-hand column of page 94, at the bottom of the column, is an anecdote. A. Yes, I read it.

Q. You have read that anecdote? A. Yes.

Q. Relating to the corporal going home on furlough and finding two blondes in his Pullman berth? A. Yes.

Q. Would you say whether or not, in your opinion, this anecdote arouses any sexual stimulus or erotic ideas? A. Of course, it creates in the mind of the reader, first of all, the idea of almost an impossible situation. Here is a man confronted with two women and the man can do less with two women than he can do with one, so he asks the other one to go out. Of course, if this were intended seriously, he would ask both of them to go out, but the fact that he asked one of them to be left there suggests that he is not entirely averse—that the man entirely is not averse to remaining with her in the berth, in the Pullman berth.

4394

Q. For sexual purposes? A. You can't have a cup of tea or a cup of coffee in a Pullman berth. I don't know what else it would be.

Q. The purpose, then, I judge from your answer, and I am not clear on the answer, Doctor, is that of having sexual relations with the remaining blonde; is that correct? A. I wouldn't say—I wouldn't say that is definitely sex relations. Some sort of sexual activity. It might be sex relations, then again it might not, but it is suggestive anyway.

4395

Q. Number 24, that is on page 95. A. Yes.

Q. In the second column on the left right under the picture there. A. Yes, I see it.

Q. The story "Home on furlough the soldier was surveying his sweetie"— A. Yes, I read it.

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4396 Q. (Continuing): —“whom he hadn't seen in months.

“‘Slimmer, aren't you', he asked.

“‘Yes', she replied. ‘I've lost so much weight that you can count my ribs.’

“‘Where', asked the G. I., with a gleam in his eye, ‘do I start?’” A. Well, you see, it is sexually suggestive because no matter where he starts from he is bound to come across a sexual part. If he starts from below he will come to the navel and then to the body and then to the breast. If he starts up he comes to the breast and then to the navel and then to her pubic region, so he is safe anyway.

4397 Q. At the bottom of the third column, Doctor, there is a story about “The beautiful Army hostess, newly arrived in camp, thought she would take a nude dip in the clear blue lake while the men were out on drill.” A. Yes.

Q. “And no one was nearby. It so happens that a rookie K. P. was sent down to the lake for a bucket of water, and seeing her pink clothes on the bank, sat down to watch. The beautiful Army hostess remained submerged up to her neck until she could no longer stand the chilling water, whereupon she scampered up the bank and found an old dishpan half buried in the mud. Hurriedly digging the pan out she held it in front of her like a shield and came ashore.

4398 “‘You wouldn't have such a smirk on your face if you knew what I'm thinking', she said.

“‘Oh, I know what you're thinking all right', said the K. P. ‘You're thinking that pan's got a bottom in it.’”

Now, Doctor, what is your opinion with respect to this one as to its being sexually stimulating? A. Well, of course, the idea is that if the pan hasn't got a bottom in it, then her whole purpose, if so, of trying to protect her genital parts by the use of the pan, is defeated, therefore, he can see the whole region, and this is sexually stimulating.

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**Q.** Now, that idea is sexually stimulating to the reader. Doctor? **A.** Yes, I would say so. What else could it be?

4399

**Q.** Now, in the third column from the left, right after the one I have read is the following: "Have a good time at the party, daughter dear, and be a good girl.

"Make up your mind, Mother".

**Ha,** that any sexual connotation, Doctor? **A.** I don't know that it has direct sexual connotation. It merely tells the opinion on the part of the girl, that you can't be a good girl and have a good time at the same time. That is to say, the type of a good time that she would have would virtually exclude being good. That is, being moral. To that extent it has a sexual connotation.

4400

**Q.** At the bottom of the same column is an anecdote reading: "Pardon me, miss", said the sentry, "but it's against regulations to swim in this lake." **A.** Yes, I read it.

**Q.** Just a minute, Doctor, I want to read it. **A.** Pardon me.

**Q.** (Continuing): "Well, for Heaven's sake," exclaimed the maiden, "why didn't you tell me before I undressed?"

"It ain't against regulations to undress, lady."

What is your opinion as to that, Doctor? **A.** Well, he took advantage of a technical point in order to do a little peeping. To see her exhibit herself.

4401

**Q.** Does that conjure up any sexual images in the mind of the reader, Doctor? **A.** Very mildly. I wouldn't say very strongly, but to some extent. I think the joke, part of it, the humor part of it, is probably greater than the obscene part because it is really clever.

**Q.** The last column, the right-hand column on page 95, has an illustration of a little cartoon, showing two girls in the water with another one disrobing, and several trees in the background with eye-holes in them, apparently camou-

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4402 flaged men, and the caption reads: "You're sure there are no soldiers around here?"

What is your opinion as to that, Doctor, as to its being sexually stimulating? A. Of course, the picture shows that there are soldiers around, even in the trees, because you can see the eyes over there, and to that extent, of course, they are able to see the women in the nude and that, of course, would arouse lascivious thoughts in the mind.

Q. Now, below that picture, Doctor, is a story of:

4403 "A beautiful young lady went for a swim in a secluded spot but forgot to take a towel. She had a swell swim, then came out on the bank and was allowing Nature's balmy breezes to dry her when she heard a rustling in some nearby bushes. 'Whose there?', she cried in alarm.

"'It's Willie,' answered a rather high-pitched voice.

"'How old are you, Willie?' asked the girl.

"The answer came quickly: '79, darn it.'"

What is your opinion as to this anecdote? A. I think it is suggestive.

Q. Of what? A. Of course, I don't believe a man of 79 can do any more than a boy of 11, but the fact that he says "Darn it," shows that there being such good opportunity, he would like to make more use of it but his age wouldn't permit him.

4404 Q. Now, are you talking about some sexual reaction? A. I think so. I think the words "Darn it" suggest that he is not pleased because he is 79 and probably sexually incompetent to take advantage of the, to him, unusual situation.

Q. What do you think of a story picturing a woman standing around in the nude while the man hiding peers at her? What special connotation would that have? A. He's getting a certain amount of sex satisfaction just seeing a nude body.

Q. What about the reader? A. The reader will try to



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realize it and his imagination would become a little bit more active.

4405

Q. In what way would his imagination become more active, in your opinion? A. It would create sexual thoughts in his mind, I would say, what I would like to call an under-current of sexual tension.

Q. Doctor, your attention has been called to some items in these pages 94 and 95. Assuming a reader were to read with interest all of the items to which I call your attention, would you state what, in your opinion, would be the cumulative effect, if any, from a sexual standpoint? A. If you pick out these particular items, I would say the cumulative effect of these particular items—that is, if the reader would read only these items and not the other items, it would be definitely sexually stimulating.

4406

Q. Suppose he read all the items? A. Some of that might be lost because some of it is rather innocent.

Mr. O'Brien: Your witness.

*Cross Examination by Mr. Bromley:*

Q. Doctor, did you ever hear a joke told just for the purpose of getting a laugh and not for the purpose of suggesting some course of conduct? A. There are some.

4407

Q. There are some? A. I suppose so.

Q. But you think most jokes are written and told just to suggest a course of conduct and not to get a laugh? A. Not necessarily.

Q. What would it be? A. It might be both.

Q. Isn't it a fact, Doctor, that most jokes are told to get a laugh and not to suggest a course of conduct? A. I never made a statistical study of it.

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4408

Q. Some of your confreres have written on the subject, haven't they? A. Some.

Q. Do you know what their opinion is? A. Probably the same as mine.

Q. Let's look and see. Did you ever hear of Ives Hendrick? A. I have.

Q. He wrote a book on "Facts and Theories of Psychoanalysis." A. Yes.

Q. Published by Knopf. A. Knopf.

4409

Q. Would you say Dr. Ives Hendrick was a respectable authority? A. It all depends on the particular subject, on what particular statement he makes. I wouldn't blindly subscribe to everything he says.

Q. Is this a book of recognized authority in your field? A. It is a book, another book.

Q. Just another book? A. There are lots of them on the market.

Q. Does it rank with yours or below? A. I don't think that is a fair question.

Q. Can't you tell the Board if it is a recognized authority or not? A. It is a good book.

Q. In that book the author says:

4410

"Many references may be acceptable in jokes which produce an emotional release by laughter, though the same thought couched in dignified language would bring exclusion from polite society."

Mr. O'Brien: Don't answer that, Doctor, until I have voiced an objection.

I object on the ground that this is trying to introduce expert testimony under the guise of cross examination. The Doctor didn't cite this book or any other book as authority for his position. It is

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a well-known fact that he cannot be examined on a scientific book unless he has relied on it for his opinion. He can only tell what this man in the book might say by bringing him in.

4411

Chairman Myers: The objection is overruled.

*By Mr. Bromley:*

Q. Do you remember the question? A. Do you want me to state whether I consider this book as an authority?

Q. No, you have already stated that. I want to know if you agree with this sentence which I have just read you.

A. Some of it.

4412

Q. Do you agree that many references may be acceptable in jokes which produce an emotional release by laughter?

A. That is right.

Q. Though the same thought couched in dignified language would bring exclusion from polite society? A. Yes.

Q. You agree with that? A. Yes.

Q. In fact, you have several times hinted that yourself?

A. I have not done much hinting.

Q. You have stated several times that references which might otherwise be considered vulgar are made acceptable when they are told in connection with the humorous joke. Is that right? A. I said that some jokes depend largely on humor and less on vulgarity, and some jokes will emphasize the vulgarity point and the humorous part is secondary.

4413

Q. When you read the joke about the girl who came out of the swimming pool holding the dishpan in front of her and read what the soldier said about "I know what you're thinking, you're thinking the pan has a bottom," did you have immediately a picture of a woman standing in front of you with her genital's exposed? A. I did.

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4414 Q. Do you think that would be the ordinary effect upon an ordinary human being of that joke? A. I would say so, because I think I am a normal man:

Q. You don't think you have been affected by your long association with abnormal people? A. No, we allow for these things.

Q. What is the correct name of the institution with which you are connected? A. St. Elizabeth's Hospital.

Q. Is this St. Elizabeth's Hospital for the insane, Doctor? A. That is right. No, it is not. It used to be Government Hospital for the Insane, and by an Act of Congress it was changed to St. Elizabeth's Hospital.

4415 Q. The people there are insane people, aren't they? A. Insane is a social term. It is not a psychiatric term.

Q. The people there are insane, aren't they? A. Do you call psychoneurotics insane?

Q. I do. Don't you? A. Lots of psychoneurotics are in the world and doing good work.

Q. Are people there for treatment of abnormalities? A. Most of them are there for what we call psychosis.

Q. And about 7,000 of them? A. Over that.

4416 Q. Isn't it fair to say that your experience has been primarily with what Mr. Hassell referred to as warped mentalities? A. My experience has been not only there. First, you must remember the treatment is largely confined not to the psychosis, but neurosis.

• Psychoses as a group are not accessible to treatment, but neuroses, what we commonly call nervous break-downs, are accessible to treatment, and their problem is largely not mental but psychic. There is a difference.

One has hallucinations and delusions. When these hallucinations and delusions extend so deeply as to determine his conduct in a way that he becomes socially impossible

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to deal with, and can only be confined in a hospital, these people are not easily accessible to treatment. They are warped mentalities. But the group that we call nervous break-downs, the problem is not mental at all. Mentally they are clear and alert, the judgment is good, but they are victims of emotional turmoils and it is the purpose to provide rest and relaxation and treatment to restore emotional balance.

4417

These are the people from whom I get most of my experience.

Then, for instance, I had an office down town, a private practice, and there I have come in contact with a large number—I would say, 90 per cent of the patients are neurotics with nervous break-downs.

4418

Furthermore, as a matter of policy with them, ever since I began to do this work, I have tried to balance up the judgments and experience and expression of opinion of the various patients I have, so I walk and talk to the brothers, sisters, mothers, fathers, uncles, aunts, as many people as I can possibly get hold of in order to get the reactions in correct relief.

Therefore, my contact has not been entirely with abnormal people. I have examined an immense number of perfectly normal people.

4419

Q. You are the only psychotherapist at St. Elizabeth's?

A. Virtually. There is another man, but he is doing more of administrative work and very little actual practice. Technically he is, but I am doing practically all the work there is, practically everything.

Q. You were born in Shlutz, Russia, weren't you, Doctor?

A. Shlutz, the same city that Maurice Hindus was born in.

Q. You took some of your postgraduate work at the University of Vienna? A. That is right.

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- 4420 Q. 1926 and 1927? A. That is right.
- Q. That is where you knew Freud? A. That is right.
- Q. You studied in the so-called Freudian group in the University of Vienna? A. No. I was under Steckel, but in the desire to gain an all-around knowledge I did work with other people as well.
- Q. Steckel was a Freudian, wasn't he? A. He was originally a Freudian and then seceded or dissented. He was considered in Vienna really the foremost Freudian although I personally do not subscribe to all of Freud. I consider myself an eclectic; that is, I studied with Alfred Adler, the late Alfred Adler, there.
- 4421 Q. Now, Freud's position has always been that sex should always be brought out in the open and frankly and freely discussed? A. That is not true.
- Q. No? A. No. That is the layman's conception of it and that is the price that every scientist has to pay when science becomes popularized. Freud didn't put the emphasis on sex. He said that anything that is within a person and has no expression always causes havoc. You can't forget a thing or put away a thing by always pushing it down, and somehow or other it is going to express itself. and the only way to relieve the accumulated tension and the symptoms is to give full play and full expression to the emotions. That is what we call emotional catharsis; it is a psychological thing that has a psychological purgative effect.
- 4422

When a person thinks of some woman all the time, the same thing over and over again, it just drives him—the common thing is called—nuts, but if he comes to somebody like a psychoanalyst he has an opportunity to share his confidence and he knows that there is someone there who is going to give him some help; that if he says something that



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is sexually crude or dirty or filthy, that the person to whom he is speaking will not disapprove; that the man is not there as a moralist or a Puritan but as a physician, and is willing to help him, and that gives him a great deal of relief.

4423

As a matter of fact, the first case that Freud analyzed and that gave him a clew to the whole thing was the case of a hysterical woman who led Freud on and on and when she disgorged herself of her painful emotions she got well.

Q. Wasn't it a part of Freud's whole theory that sex was the most controlling factor in life? A. No, there again you have the most popular conception of the psychoanalysts who do not think of sex as the laymen do. We don't think of it in terms of genitals or organs or male and female performing a particular function. We think of it in a larger biological sense, as having to do with the procreation of the species and the perpetuation of the race.

4424

Q. Do you know Dr. Kenneth Tillotson, the psychoanalyst connected with various hospitals in Boston? A. I met him once.

Q. Did you know that he is the head of the Hygiene Department in Cambridge? A. I didn't know that.

Q. Would you say that he is a man of excellent reputation in your field? A. I would say he is a good man.

4425

Q. Did you know Dr. Clements C. Fry of Yale University? A. Yes. I have heard of him and I know of him. You see, the only way I know most people is by their publications, and these two people haven't published very much.

Q. Well, you are familiar with Dr. Clements C. Fry's book, "Mental Health in College," written by him last year?

A. No, I am not.

Q. You never heard of it? A. I think I came across a review of it.

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4426 Q. Would you say that Dr. Fry was a man of considerable reputation in your field, particularly so far as case studies of youth are concerned? A. I really couldn't tell you because I don't know much about him. I only know people who publish a good deal, and he is just what you would call a recent arrival.

Q. Now, in your direct testimony, Doctor, you have referred frequently to the undercurrent of sex tension. A. Sexual tension.

Q. Of sexual tension? A. Yes.

4427 Q. Isn't that what Freud refers to as the libido of tension? A. No, not necessarily. The first conception of libido is more universally known. My own is more specific. I would say the undercurrent of sexual tension is a part of the libidinal behavior, but remember we don't use the term "libido" as you people do. There again it is a clash between the scientific approach and the layman's approach.

Q. Isn't it a fact that this undercurrent of sexual tension to which you refer is a force which is always at work in human beings? A. It is at work but it is often latent or dormant and may be aroused by appropriate stimuli.

4428 Q. Those appropriate stimuli are very great in number, aren't they? A. Oh, yes. It doesn't take much to arouse a young man.

Q. The undercurrent of sexual tension can be aroused by almost anything? A. Well, now, that is a rather broad statement.

Q. I was only repeating your words. A. I wouldn't say by almost anything. I would say that globe (indicating), that electric globe, I don't think that will arouse any sexual tension. I don't think the hat on the rack will arouse any sexual tension.

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Q. Silk stockings might, though? A. Yes, especially on a pretty leg.

4429

Q. Hair might? A. What kind of hair?

Q. Well, you tell me what kind of hair. A. Women's hair, done up in a pretty way, it might, and then again it might not, depending upon the person, depending upon the setting, depending upon the receptivity of the individual.

Q. Then it is fair to say, isn't it, Doctor, that this undercurrent of sexual tension is a perfectly normal and natural thing? A. It is to the extent of the receptivity in which it appears in a human being. I mean, a human being from the age of puberty to senility, and sometimes even senility.

4430

Q. You wouldn't be in favor, would you, of abolishing everything that might stimulate or affect that current? A. Oh, no, that would be a tragic situation. I wouldn't want to abolish dances, I wouldn't want to abolish any of the gatherings where young people might meet, because that is what keeps life going.

Q. Now, you refer to the buttocks as being an erogenous zone. A. That is right.

Q. As a matter of fact, the erogenous zone is not the buttocks at all but it is the anus, isn't it? A. No, it may be the buttocks. They sometimes speak—there are certain perverts who speak of the buttocks as the cheeks and they often kiss it in the same way as a normal man would kiss the cheek of a maid.

4431

Almost anything might become the erotic zone but with many normal people it is primarily the genital region and the others as a sort of subsidiary feeling. There are men who would concentrate their attention primarily on the breasts, some like caressing and petting of the back, some

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4432

like the pinching of the buttocks, some like the caressing of the thighs.

Men differ a lot in that respect.

Q. What are the four erogenous zones that you mentioned yesterday, Doctor? A. I don't know whether there are four. There are many.

Q. I think you said four. A. There are many more. We will say the breast is one, the genital region itself is two, the buttocks three, and the thighs are four. ○

Q. What about the lips? A. Of course a very nice erogenous zone.

4433

Q. Now, have you forgotten any others? A. Oh, I said specifically there are many.

Q. Many? A. I merely mentioned—anything that can become an erogenous zone. I would say there was a time about eight or ten years ago when the women had dresses with the shoulders exposed and due to the fact that the rest of the part was covered and only the shoulder was exposed, that became an erogenous zone because it aroused the interest of the male as to what is behind it.

4434

Q. So a woman with a low-cut back in an evening gown, that would be an erogenous zone, the bare back? A. Well, it all depends how she is dressed; I would say yes. The purpose of the evening gown is to produce some sort of a sexual stimulation within proper limits. We don't see very much of the breast exposed in an evening gown, there is just a tiny bit, maybe a suggestion, even though the skirt may be arranged so as to expose the hips a little more prominently; it is not prominently displayed.

Q. So that a slit skirt would make the area exposed by the slit an erogenous zone, isn't that true? A. It would be sexually stimulating although it is supposed to be within the limits of socially accepted behavior.

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Q. By the way, Doctor, would you say that the ordinary pair of pants that a member of the United States Navy wears accentuate the erroneous zone in the male, to wit, the buttocks? A. I don't think so. I don't think the normal male—there are men whom we call homosexualists or commonly known as "queers" to whom that may appeal, but I don't think it would appeal to the normal man any more than the erogenous zone in the woman would appeal to the average woman, although she may appreciate the beauty of it.

4435

Q. Would the accentuated sailor's buttocks appeal to the female? A. To the female?

4436

Q. Yes. A. Some, perhaps, some females.

Q. Will you look at the Varga girl picture in the July issue, which you did not mention in your direct examination, and tell me whether or not that drawing shows the erogenous zone of a man and a woman in action? A. Just the lips, juxtaposition of the lips, or almost the juxtaposition. It is just a picture that you find commonly, where they are ready to kiss each other.

Q. Now, would you say that the beholder would be sexually stimulated by that picture? A. It would just create a picture—he would probably want to be in his place, that is about all.

4437

Q. Now, will you tell us what you think that the beholder of that picture would be sexually stimulated about, if the beholder of that picture would be sexually stimulated? A. He might, depending on who he is; his age, his position in life, his previous experiences.

Q. You would say, wouldn't you, that that picture would create an undercurrent of sexual tension? A. I doubt it very much. It is almost too innocent, too acceptable. There is nothing else here, you don't see anything else that would support it.



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4438 Q. Well, you see a man and a woman together in the act of kissing, don't you? A. Yes. That is all. You see it in the movies and you see it anywhere.

Q. Wouldn't that stimulate sexually an undercurrent of passion in the young man? A. It is so common and so acceptable as to cease to be a stimulus in that respect. If they were standing up and you see bust and her body and a great deal of passion displayed in the behavior, it might.

Q. The lips are one of the commonest erogenous zones, aren't they? A. Yes, so common we almost don't pay any attention to them.

4439 Q. Yet you think, if anyone is telling a milkman joke, that that would have a greater sexual stimulus on the listener, do you? A. Yes, because it is illicit.

Q. Because it is illicit? A. Yes, this is illicit.

Q. So that in your view anybody telling a story of a milkman coming to the back door would create in the mind of the average person a greater sexual stimulus than to look at this picture of a beautiful girl and a good-looking man kissing each other?

Mr. O'Brien: I object to the characterization of the picture; they are not kissing.

The Witness: No, they are not.

4440 Mr. Bromley: I will amend it to say "about to".

The Witness: It all depends on what kind of a milkman joke. The kind I heard are not conducive to moral purity.

*By Mr. Bromley:*

Q. Well, take the one that is pictured in the magazine, the one of the milk girl. That is just the reverse of the milk-



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man joke, isn't it? A. Yes. I think it is definitely sexually suggestive.

4441

Q. You think it is greater than this picture? A. I would say yes, especially that picture, if I remember it, the pose: the bust is sticking out and the back is sticking out backward, and the bust is forward, giving a complete impression of sexuality.

4442

Q. Do you ordinarily think of sexual intercourse when you think of that cartoon, Doctor? A. No, I don't think of intercourse as so, but I think that something might happen. I mean I don't see the purpose of that picture except why? That here the woman of the house goes away and the man and the milkwoman are going to entertain each other, and the picture doesn't say how they are going to entertain each other, so I reach the one inevitable conclusion.

Q. And the one inevitable conclusion is sexual intercourse, Doctor? A. I would say so, yes, or at least some sort of sexual intimacy.

Q. So you think every joke has a purpose of suggesting action, do you? A. Some. I recall somewhere in the book by Hendrick, there you will find a reference to Freud, to Freud's book on "Wit and the Unconscious." Hendrick is a good psychoanalyst; he belongs to the orthodox Freud group and he does accept the statement of Freud where Freud indicates that many of the so-called witty jokes have a definite sexual meaning behind them.

4443

For instance, a lady—I am quoting this and I may not quote very accurately—a lady asks a man what is a eunuch, and the man was very much embarrassed and then taught himself and then says, "He is a bald man."

"Oh," she says, "you are a eunuch," because the man happened to be bald.

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4444

"No," he said, "it is a two balled man."

Now, you figure it out your own way.

"I am a two-balled man." You find it in Freud's "Wit and the Unconscious" translated by Brill.

Q. Now, Hendrick says, agreeing with Freud, that such things as art and religion stimulate the sex impulse. A. I don't think he says that. I think he says that the origin of art lies oftenwise in the sexual instinct, but if you look at a picture of Leonardo da Vinci you need not be stimulated.

4445

If Mr. O'Brien will let me show the picture of Joan Leslie that I brought here, that demonstrates very clearly the difference between art and vulgarity.

In my own mind, just to be fair with you people, I went ahead and tried to look up in Life a number of pictures, and this I picked out. It is a year ago, Joan Leslie.

There you see a young woman, she has grace, she has charm, she has loveliness.

I know perfectly well that she has breasts; you don't see it. I know she has buttocks, thighs and legs and slit, but you don't see it.

4446

I would say this is a picture more or less artistic because it is true to life. You see grace without voluptuousness. You see charm without passion. You see loveliness without lust. But the effect of this is not temptation but admiration.

Temptation is essentially aggressive and possessive. The man who looks at the Varga girls feels within himself that he would like to have one like her.

Admiration is not possessive. You don't want to possess Joan Leslie. You just admire it. There is a difference.

It is not here to create a picture of temptation or lasciviousness. You see a nice lovely woman, lovely womanhood in the best sense of the word, whereas in every Varga girl that you got is the more common, the more vulgar.

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Here you see womanhood, here you see femaleness, accentuation of the physical: If one were to go to Esquire and judge American women by that alone, he would think that American women are doing nothing else but trying to sexually mislead men. 4447

I don't think American women are that bad.

I was impressed by these pictures, not by the accentuation of the erogenous zones, but by the absence of modesty and innocence. You can't find a girl here who looks modest and innocent. There is too much vulgarity.

I don't believe there is a single virgin among the Varga girls. 4448

Q. You think that the Varga girl compared to Joan Leslie is in very poor taste? A. It emphasizes the femaleness. I think there are a lot more things to a woman than sex. A woman has a personality, a culture. She has a background, charm, a loveliness.

Lots of things about women are not necessarily sexual, but all the impression I get from reading all that is sexual, sexual, sexual.

Mr. O'Brien: Mr. Bromley, the cartoon you were discussing a few minutes ago is in the September issue, page 65, the milk-maid picture. May I put that in the record for identification of the date of the magazine which the Doctor brought. It is October 26, 1942. I would like to offer it in evidence. 4449

Chairman Myers: Wait for your time.

*By Mr. Bromley:*

Q. I am reading to you from the Speaker's Library Magazine. Do you find anything sexually stimulating in this story:

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4450

"A little girl and boy were in their baby carriages outside a store.

"Baby girl: 'Are you a boy?'

"Baby boy: 'Yes!'

"Baby girl: 'How do you know? Are you sure?'

"Baby boy (looking underneath the covers): 'Yes, I'm positive of it.'

"Baby girl: 'How can you tell?'

"Baby boy: (smiling, lifting one foot): 'Blue booties.' "

4451

A. I must confess I am awfully dumb on these things. When this was first read to me I didn't catch it. It would look as if it were sexual, but I don't think it is sexual. That is my first impression.

Mr. Bromley: Will you mark this Speaker's Library Magazine for October, 1943, for identification?

(The document above referred to was marked Respondent's Exhibit No. 127 for identification.)

Mr. Bromley: I offer it in evidence.

Chairman Myers: Any objection?

4452

Mr. O'Brien: Yes, I have an objection. It is not a magazine at all like Esquire and anything that might appear in that would have an entirely different connotation. It doesn't seem to me to be relevant in the case.

Chairman Myers: The objection is overruled; it is received.

(The document heretofore marked Respondent's Exhibit No. 127 for identification was received in evidence.)

*Benjamin Karpman—for Post Office—Cross.**By Mr. Bromley:*

4453

Q. Now, is it your opinion that a joke about members of one sex peeking out of camouflaged trees at partially clothed members of the opposite sex, is sexually stimulating?

A. I think so.

Q. Would you say that any comic strip that carried such pictures as that would be sexually stimulating? A. You will have to show me a comic strip that has exactly that kind of picture. I couldn't pass judgment on a theoretical, imaginary comic strip.

Mr. Ellis: I wonder if the witness could talk to the Board. We are not hearing you, Doctor.

4454

The Witness: All right.

You are not likely to accuse this woman of that age of having any sexual thought, would you, nor would you say these people might be influenced sexually by this type of woman?

Mr. O'Brien: If the Board please, counsel is cross examining this witness upon matter which we have not had an opportunity to look at. It isn't even mentioned except as a comic strip.

Chairman Myers: Have it marked for identification and let Mr. O'Brien see it.

4455

Mr. Bromley: Will you mark this for identification as Respondent's Exhibit 128?

(The document above referred to was marked Respondent's Exhibit No. 128 for identification.)

*Benjamin Karpman—for Post Office—Cross.*

4456

*By Mr. Bromley:*

Q. You see only that in Respondent's Exhibit 128 for identification there are females camouflaged as trees looking at Mutt and Jeff who are naked, in swimming, and who have come out and hid in the bushes, don't you? A. Aren't they going in this direction, away from the scene? They are going this way (indicating). Their eyes are facing that way. Unless they see backwards I don't see what they could see.

4457

Q. So you would say that is not sexually stimulating and the girls are not looking through the knotholes? A. Peeping is far more common among men and not among women. Girls are not likely to peep anyway.

Q. So you would say there is nothing sexually stimulating in that cartoon? A. I don't see anything particularly. There might be some suggestion, very light, to some people under some circumstances.

Q. You see that in the left-hand box in the third column, Mutt and Jeff are right up against the girls who are camouflaged as trees? A. Yes.

4458

Mr. Bromley: I offer it in evidence.

Chairman Myers: Have you seen it, Mr. O'Brien?

Mr. O'Brien: This is certainly going far outside the scope of direct examination to bring in the comic strips. It relates to nothing in Esquire.

Chairman Myers: This is cross examination.

Mr. O'Brien: I know that, but I presume there is some limit to cross examination as well as direct. I think this thing in the funny paper has a very different connotation than from Esquire, and would be read, I think, by people with very different kinds



*Benjamin Karpman—for Post Office—Cross.*

of minds, who had not been educated to Varga girls and dirty jokes, so I think it has no relevancy in this case. I object to it.

4459

Chairman Myers: It is received.

(The document heretofore marked Respondent's Exhibit No. 128 for identification was received in evidence.)

*By Mr. Bromley:*

Q. The cartoon at page 137 in the January issue, Doctor. I can't see anything very bad about that, can you? A. Did I say it was?

4460

Q. Sir? A. Did I say it was?

Q. I was trying to get you now to say. A. It is one of the things I didn't think very much of.

Q. Won't you talk so the Board can hear you just once? It is one of the things that you didn't think very much of, you said? A. Yes, that is right.

Q. And that is why you didn't mention it? A. That is right. I mean, I was not asked.

Q. That is why you were not asked. A. As to that, I don't know. I cannot tell you what's in the lawyer's mind, why he asked one thing and wouldn't ask another. I merely tried to answer to the best of my ability the questions asked.

4461

Q. This cartoon in May at page 48, the airplane spotters, you didn't find anything bad about that, either, did you? A. I passed it off too. I didn't think much of it. Of course, there is a real suggestion that while they may talk about a certain type of airplane they are actually talking about some women, because they are looking down. But I passed it off. I didn't think there was much to it.

*Benjamin Karpman—for Post Office—Cross.*

4462 Q. Did you tell Mr. O'Brien that you passed it up? A. He didn't ask me about it.

Q. I mean in conference with him, not in the court room.  
A. I did my own. I did very little advising or consultation with anybody. I took this and sat down in the office and went through it and figured what had any connotation and what I didn't think was.

Q. And you didn't tell him that you thought these cartoons were all right? A. I don't remember telling him anything about it. I don't think he asked about it.

4463 Q. Did you read this poem "Benedicts, Awake"? A. Yes. I did.

Q. You didn't find anything bad about that, did you?  
A. I think it was suggestive. "Men, sleeping beside your wives." It creates a picture of a man sleeping beside his wife. He is just sleeping.

Q. You think that a reference to a man sleeping beside his wife is what? A. It may be sexually suggestive—not to everybody, not at all times.

4464 Q. Well, we are talking about this poem. What about this poem? A. I imagine it might create some tension in some people. I wouldn't say in all, but in some people it would. They would try to picture what it is the man is doing in bed with his wife besides sleeping.

Q. Do you think it is something that ought to be prohibited? A. That is a legal matter—

Mr. O'Brien: I object.

The Witness: —which I am not competent to pass on.

If the other side will permit me to say, I will give my opinion, but I think this is a legal matter and I am incompetent to pass judgment on legal matters.

*Benjamin Karpman—for Post Office—Cross.*

You understand, I am not on the witness stand against you people.

4465

*By Mr. Bromley:*

Q. Oh, you are for us? A. No, I am testifying according to my conscience, what I think I feel. I think there are a lot of good things in Esquire.

Q. What I want to get you to do, if you will, is to express your opinion as to whether the effect of that poem is so bad that people ought not to be allowed to read it. A. It depends upon what people. On some people it would not have any influence at all. On some people it might create a mild flurry, one might call it, and on some people it will have a mild sexual effect. I like to qualify my remarks.

4466

Q. Yes. Will you give me the benefit of your opinion one step further? Because this poem may affect some people more than others, would you say its effect was so dangerous it ought not to be published at all?

Mr. O'Brien: I object to that question. We have not qualified the Doctor upon danger.

Chairman Myers: You have qualified him as an expert.

4467

Mr. O'Brien: Upon the effect of this or other printed matter of a sexual nature upon the mind, but not upon the danger to the public.

Chairman Myers: The objection is overruled.

The Witness: I have not committed myself as to whether Esquire should be published or should not be published, or prohibited or not prohibited from the mail.

*Benjamin Karpman—for Post Office—Cross.*

4468

*By Mr. Bromley:*

Q. I am not asking you whether it should be prohibited from the mails. I am trying to find out whether, in your opinion as an expert, you consider this poem as so suggestive to some class of people that it constitutes a danger and, therefore, should not be left at large in the world. A. I wouldn't say "danger". There is nothing dangerous.

4469

Q. Nothing dangerous at all? A. It would create an undercurrent of sexual tension which with some people will pass off and nothing is left. With some people it will leave a mental picture that might last for hours, and it might even lead some people to some action.

It is hard to say what people will do. But, as I say, the poem does create an undercurrent of sexual tension.

Q. But you don't think that would corrupt anybody's morals, do you? A. The man who would be influenced by this kind of picture is beyond corrupting.

Q. He is so bad he is beyond corrupting? A. I wouldn't say he is so bad, but he probably looks for this type of picture. He goes after it.

4470

There are people who read not only this but, the chances are, the people who read this also read many other journals that have similar appeal. They may even ignore the rest of the material that is good, legitimate stuff, and just go after that.

And I imagine there are people who read the Esquire only for the good stuff and let this pass by.

Q. The first class of people you spoke of would find this sexual stimulation in a whole lot of things? A. They don't need much to be stimulated. There is material here that is suggestive and stimulating. It may not stimulate you, and it may not stimulate me, but it will stimulate John Smith.

*Benjamin Karpman—for Post Office—Cross.*

Q. But if it stimulated John Smith he would get a stimulation from lots of things? A. Many things. 4471

Q. All sorts of things? A. You will have to qualify it. A number of things.

Q. A number of things? A. That is right.

Q. And, of course, it would be a hopeless task to try to take out of the world all those other things, wouldn't it?

A. That you will have to tell Mr. Hassell, not me.

Q. You don't know?

Chairman Myers: We will take a recess for ten minutes. 4472

(Whereupon, a brief recess was taken.)

Chairman Myers: Proceed, gentlemen.

*By Mr. Bromley:*

Q. I call your attention, Doctor, to page 90 of the August issue. You don't find anything objectionable in the cartoon of the lady at the lathe, do you? A. At first glance I don't, and I probably wouldn't find it at second glance either, but I imagine some would.

Q. Do you find any charge against that cartoon as stretching things beyond all reason,—do you? A. I wouldn't say all reason, but beyond ordinary reason. 4473

Q. In the March issue, at page 68, is that one of the articles you couldn't read through, "The Fall of the Flattering Word"?

Mr. O'Brien: I object to the question. There is no testimony that he couldn't read through any article at all.

*Benjamin Karpman—for Post Office—Cross.*

4474

Chairman Myers: Yes, there was. He said so himself.

The Witness: I am sorry I wasn't interested to read all these articles through.

*By Mr. Bromley:*

Q. I know, Doctor. This is one you were not interested to read through? A. Yes, but I noticed a few things.

Q. You noticed a few things without reading? A. I read some of it, but I didn't read the whole thing.

4475

Q. What parts did you select to read? A. I haven't in mind—I don't think I marked it here. I don't remember how this—without reference to your marking here—

Q. Oh, I know, yes.

Mr. O'Brien: We will find the copy he examined if you would like to look at it.

The Witness: I would like to have a copy so you won't think I am influenced by your marks.

Yes, I read that (indicating).

*By Mr. Bromley:*

4476

Q. On page 68 where are the marks you talked about? A. Here, these (indicating). This is what he called my attention to.

Q. Who called your attention to? A. This here. This hand, the printed finger (indicating).

Q. The red hand that is stamped in the article? A. That is right.

Q. That was in there when you got the magazine, Doctor? A. Yes.

Q. Wasn't it? A. That is right.



*Benjamin Karpman—for Post Office—Cross.*

Q. Now, can you tell us after you now look at that copy whether you read that article or not? A. I didn't read all of it, I just read part that my attention was called to.

4477

Q. I take it you did not find anything objectionable in whatever it was that you read. A. I wouldn't say that. There are some suggestive things. I wouldn't say as a whole; I personally would let it go.

Q. You would let it go? A. Yes, although I can see that some of the things are suggestive, the V-neck and so on.

Q. Well, is one of the things you think suggestive, the use of the term "fly-front" in the third column? A. Yes.

Q. You find that suggestive? A. I find that suggestive; isn't it?

4478

Q. You know I saw it in an advertisement in a Washington paper yesterday, spelled right out, f-l-y. I did not think it was suggestive.

Would you have that impression if you saw it in a full-page advertisement in a Washington newspaper? A. I would think that probably it was some mistake.

Q. Some mistake? A. Yes. The Washington Post is not infallible.

Q. You know, don't you, that the advertising copy in the Washington Post is not written by the Post but written by the advertiser? A. I know, but I think the Washington Post will not allow a very misleading advertisement there, and somebody read it and looked it over and apparently it passed their own censorship in some way, but I don't see what else you can get from the term "fly-front".

4479

Q. What did you say? A. I don't see what else you can imply by the term "fly-front."

Q. What do you imply by the term "fly-front"? A. Well, the part of the trousers which covers the genital region which can be unbuttoned for purposes of passing water or what not. Is that what you call the fly?

*Benjamin Karpman—for Post Office—Cross.*

4480

Q. Did you ever hear of a fly-front overcoat, Doctor? A. No, I haven't.

Q. You never heard of it? A. Fly-front?

Q. Yes, a man's overcoat called a fly-front overcoat? A. No, I never heard of it.

Q. You never have? A. No.

Q. Did you ever hear of a fly-front pair of slacks that women wear? A. I think I came across it once or twice but I took it because it is clothes or built on the same style of men's it meant the fly of the pants.

4481

Q. Did you ever hear of a woman's coat, a single-breasted woman's coat which is referred to publicly and in advertisements as a fly-front coat? A. No, I haven't.

Q. Don't you know that any arrangement of buttons and button holes in which the button holes are concealed by a fold over the top like on your pants is referred to as fly-front, whether it be a pants, men's, women's or a pair of slacks that women wear? Do you know that? A. No, I don't know that.

Q. You don't know it? A. No.

Q. Now, if it is commonly used practically to describe that style of buttonhole and button arrangement, you wouldn't think that there was anything nasty about putting it in an article in Esquire, would you? A. Probably not.

4482

Q. I show you the Washington Star for Monday, November 1, an advertisement of Kann's and ask you if you don't see there an advertisement for striped color print classic dress with an illustration and the price of it is \$10.98? A. Well, now, you see, when we usually think of the fly—the fly of the pants in terms of men's clothes. When you refer to that in women's clothes you get a different connotation altogether.

Q. Well now, just tell me one question at a time. You see that advertisement? A. Yes.

*Benjamin Karpman—for Post Office—Cross.*

Q. In the Washington Star. A. Yes. I don't get the same picture, the same idea of the fly here in a woman's dress as I would get in a man's clothes. In the man's clothes I would refer to it specifically to an opening in the trousers.

4483

Q. Suppose instead of being a pair of trousers or a woman's dress there had been in the advertisement a pair of pants pictured and underneath it said: "Striped color print classic pants", with the price of \$10.00. "Would you think that was anything that would corrupt morals or be indecent, Doctor?" A. I never came across that term before.

Q. Now, I am asking you something else. I am not asking you whether you came across that term before. Suppose it was there in reference to pants, would you say it was indecent? A. In terms of my previous understanding I would say there was probably something wrong in the printing. I never heard a public use of the word fly that way because it was always referred to as the fly of the pants.

4484

Q. In your understanding, anybody who uses the word fly front is guilty of an indecency, is that correct? A. No, I wouldn't say that. You are trying to impute something to me.

Q. No, sir; I am trying to get you clear, Doctor, then you have no criticism with Mr. Seldes' use of the word fly-front of that article of that March issue? A. Not particularly. I said at the time I read it it impressed me as referring to trousers, and I think I was a little bit off.

4485

Q. Now, the July issue at page 148 has the cartoon of the perfume counter. I cannot see anything objectionable to that, can you?

Mr. O'Brien: Now, I object to that question on the ground that he is testifying and not asking the witness questions.

The Witness: I just passed it off.

*Benjamin Karpman—for Post Office—Cross.*

*By Mr. Bromley:*

4486

Q. You just passed it off, did you? A. Yes.

Q. Likewise I take it that you passed off as not objectionable the poem "Dog's Worst Friend" on page 141? A. Oh, that is bad.

Q. That is bad? A. Yes.

Q. Now, that is bad because it refers to what dogs do on the street? A. That is right, it is vulgar rather than obscene.

4487

Q. I don't think the Board can hear you. You think it is vulgar rather than obscene? A. Yes. I make the distinction, I understand, from the standpoint of law, that there is no law against vulgarity but there is a law against obscenity and obscenity is that which stimulates sexual thoughts and this is merely vulgar and there is an idea here of revenge, that he would like to bury them in the cemetery lot and let other dogs do to them what they did to them. I think it was very vulgar. I don't think it was particularly obscene.

Q. Now, in the August issue at page 30, did you have time or were you able to read the article: "Many Wives Too Many"? A. I read some of it, yes.

4488

Q. Well, I take it since you did not mention it you had no objection to it, Doctor? A. Not particularly, just there is too much material to run over.

Mr. Cargill: The Board can't hear you, Doctor.

Mr. Bromley: I think he is talking to himself.

Mr. Cargill. I can't hear him either.

The Witness: Maybe you are better off. I don't see anything there. There is the word "polygamy", which very remotely might be suggestive, but I wouldn't say it would be very suggestive to me.

*Benjamin Karpman—for Post Office—Cross.**By Mr. Bromley:*

4489

Q. Where do you find that, Doctor? A. Here (indicating).

Q. You refer to page 31 in the third column? A. Top.

Q. Top, this sentence: "With all the talk there is about a twenty-five thousand dollar annual income ceiling, it doesn't seem that Joad has picked the best of all times to propose polygamy."

Now, do you say you have objection to that sentence?  
A. No.

Q. No? A. No.

Q. In the same issue on page 110, this low-blood pressure nurse. I take it you have no objection to that? A. Well, it is a little suggestive because it suggests that if a person has low blood pressure this nurse can stimulate him so his blood pressure will go up.

4490

Q. Is that true as a medical fact? A. I think it does, and you probably heard the song of the last war?

Q. No, sir. A. "I am in love with a beautiful nurse and every time she takes my temperature my pulse goes up." You never heard it?

Q. No. A. You missed it.

Q. In that joke of the last war there was nothing even vulgar, was there? A. No.

Q. Just a joke? A. Very thinly suggestive, but Good God, there are a lot of things that are suggestive.

4491

Q. You would make the same comment to this Miss Blimpton cartoon, would you say? A. I would say so.

Q. In the next issue for September, at page 66, would you give me the benefit of your opinion with respect to this cartoon about the boy and girl courting in the presence of their mother and the cook. Nothing wrong about that, is there? A. Well, it is an old joke, but there is such a close

*Benjamin Karpman—for Post Office—Cross.*

4492

and intimate embrace that they have even forgotten modesty; a close embrace in the presence of other people and they probably don't notice them. It is suggestive.

Q. But, when you went over this material you found nothing suggestive about it, did you, Doctor? A. No. I think it is one that is thinly suggestive. They have almost lost themselves in the embrace and don't notice those people and then they try to justify it.

4493

Q. Well, the people who try to justify the embrace number among them the mother, don't you see that? Don't you see the presence of the mother there and her laughing at this, about the fact that both of the young people work nights in a war plant and that completely removes any vulgarity?

A. The only point is I don't think the couple notice the mother.

Q. But the mother notices the couple. A. Yes, but this couple in the close embrace didn't notice the mother. It is the couple in the close embrace and not the mother.

Q. But if the mother had any objection to it, she wouldn't be laughing, would she? A. Yes, but I would say the reference is not to the mother. Nobody suggests that the mother is in any way indecent or lascivious. It is this part of the picture (indicating).

4494

Q. Don't you think it is important to notice that the mother doesn't think there is anything suggestive in the close embrace? A. Well, there are mothers and mothers; of course.

Q. Now, by the same token, you don't find any objection to the same kind of cartoon that appears on page 84, do you? A. Well, it is along the same line. Every night he tells her he is sailing tomorrow and I suppose she has got something that keeps him, that makes him stay.

Q. Now, what is that something? A. It.



*Benjamin Karpman—for Post Office—Cross.*

Q. Eat? A. It, i-t.

Q. It? A. It recalls that she has got the "it".

4495

Q. The itch? A. No, not itch, the i-t.

Q. You see again the parents are there in that cartoon, don't you? A. Yes.

Q. Now, when you went over it you didn't find anything suggestive in it? A. Not particularly. It is a close suggestive embrace, very thinly suggestive, is about all I would say.

Q. It is quite common in reputable magazines, isn't it, Doctor?

Mr. O'Brien: I object to that question. We haven't qualified the Doctor as to what is in other magazines.

4496

The Witness: Yes. I read The Nation and the New Republic. I never found a picture like that there.

*By Mr. Bromley:*

Q. Have you ever read Colliers? A. No.

Q. I show you Colliers for July 3, 1943, and ask you what comment you have to make about the picture at the bottom of that page? A. That is even more suggestive than this.

Mr. Bromley: Will you mark this for identification?

4497

(The document above referred to was marked Respondent's Exhibit No. 129 for identification.)

Mr. Bromley: I offer it in evidence.

Chairman Myers: Did you show it to Mr. O'Brien?

Mr. Bromley: Yes (handing Respondent's Exhibit 129 for identification to Mr. O'Brien.)

*Benjamin Karpman—for Post Office—Cross.*

4498

Mr. O'Brien: Well, I think, if the Board please, that this should not be admitted into the record nor the question and answer concerning it should not be, because certainly there was no reference to it on direct and the witness didn't say whether he read Colliers, so it doesn't seem to me to be material as part of cross examination. There isn't any purpose to it and I don't see what effect it would have on the issue here.

Mr. Bromley: It certainly is material on our present day standards.

4499

Chairman Myers: Objection overruled. It may be admitted.

(The document heretofore marked Respondent's Exhibit No. 129 for identification was received in evidence.)

*By Mr. Bromley:*

Q. I call your attention to the September issue, Doctor, page 87 and to the third column of that page, the joke at the bottom of the page, to which you did not make any comment on in direct:

4500

"She: 'Would you like to see where I was operated on for appendicitis?'"

"He: 'No, I hate hospitals.'"

Your failure to mention it, Doctor, meant that you had no objection to that, isn't that right? A. I don't see much of a point to it.

Q. Well, do you see anything vulgar about it? A. Not particularly.

Q. Now, isn't it a fact, Doctor, that this whole double-

*Benjamin Karpman—for Post Office—Cross.*

page spread of "Goldbricking with Esquire", republishing as it does jokes from Army camp papers really, in your opinion, has no significant effect on stimulating sexual desires at all? A. No. It all depends on how you look at it. If you take it all in, probably the few off-color jokes might be lost but there are men who just look for just this kind of a joke. They ignore the others. I think it will have an effect. You understand, of course, I believe that a good deal of it is perfectly all right.

4501

Q. Yes. A. Perfectly decent and I would have no objection, but there are a few now and then that are off-color and perhaps a few more off-color, and there are men, I wouldn't commit myself how many men, there are men who look just for this kind of stuff.

4502

Q. Those men are abnormal men, aren't they, Doctor? A. Oh, my goodness, if you call them abnormal you wouldn't have enough hospitals to build for them. They are common people. Lots of them; you meet them in daily life; they are right among your friends.

Q. Aren't they the exception rather than the rule? A. I wouldn't say they are the exception.

Q. You think a majority of our citizens go through a two-page spread of jokes like this and only pick out the ones that are off-color? A. No, I wouldn't say they only pick out, but they do particularly pick out this kind of joke; they will read this kind of joke; what will stimulate them is this kind of joke; the others are interesting and they get a little laugh, but that is all to it, but when you get a little risqué joke, a little off-color, they like it. The chances are they will not repeat to any of their friends this kind of joke because there isn't much to it, but they are likely to repeat this kind of joke.

4503

*Benjamin Karpman—for Post Office—Cross.*

4504

Q. When you say this kind of joke, you point out the two blondes in the berth joke; is that it? A. Yes.

Q. You say most people would be likely to repeat that kind of joke? A. Yes. These are the kind of jokes they pass around. You probably have heard of the dirty jokes, the jokes that go around and around. You tell it and five minutes later someone else tells it. It takes about five years for that kind of joke to come back to you. These are the jokes that pass from one person to another.

4505

Q. Do you think that the fact the off-color joke is so widely told in this country has a corrupting influence on any part of our population, Doctor? A. I wouldn't say it has a corrupting influence. I would say it is indicative of the trend of times and perhaps of our cultural setting. There has been a great deal of loosening of sexual repression since the last war; more has transpired to loosen sexual repression in the last twenty years than the previous hundred years.

The young girls 18 years of age know more than my grandmother did at the age of 85.

4506

Q. In the October issue at page 38, were you able to read the article on "Wise Men Pick Pyknic Girls"? A. Here is another one, what I call the scientific tragedies. A scientific concept becomes popularized and then it becomes degraded and people vulgarize it and misuse it.

There are Pyknic types. Of course, in the time of Kretschmer who developed the Pyknic type and asthenic type—I think if Kretschmer would see that he would be mortified. He would not recognize himself.

Q. You object, do you, Doctor, to the popularization of serious scientific theories? A. There is a way of popularizing like the Scientific Monthly does or even some of the articles published in Science News Service where it is presented with a certain dignity and correctness, but when it gets to magazines—first of all, popular magazines—it becomes degraded.

*Benjamin Karpman—for Post Office—Cross.*

Q. Yes. A. Now, if you were to show these women separately, not in an amorous embrace, it might not be so bad. She may belong to the Pyknic type. But is it necessary to put her in close embrace, close sexual embrace, in order to show she is a Pyknic type? It is wholly unnecessary and impertinent and irrelevant.

4507

Here again, it is an opportunity to show a couple of buttocks, a couple of thighs, and a couple of breasts.

Q. Did you have any reference to any part of the text, Doctor? A. I would not have written that way because it gives a false conception of the Pyknic and asthenic types. We speak of the leptosome and so on—

4508

Q. Let's put it this way. Is this your only objection to it? A. To what?

Q. To this article, that it vulgarizes a scientific theory? A. I don't remember if I noticed anything else. I was particularly attracted to this.

Understand me, this is not incorrect entirely and it is fairly scientific, but to say the Pyknic type is of a soft, jolly, yielding, loving, peaceful, sunny, good-natured temperament—it is a hodge-podge.

You mix up so many different personalities.

Many of these don't go together even. Probably they are lots of times not jolly and you put the word soft and peaceful and loving, and you mix all the personalities of human beings. What is left of the specific type?

4509

As a matter of fact, Kretschmer never described that. What we mean by Pyknic type is the type who develops the manic depressive type of psychosis.

But I wouldn't say everyone who has a sunny disposition belongs to the Pyknic type. It gives the impression of universality, which is not true.

*Benjamin Karpman—for Post Office—Cross.*

4510

I say when it becomes popular it becomes degraded.

Q. Is that the objection you have to this article? A. Yes, that is my main objection, and I say again that all these pictures to demonstrate that are wholly unnecessary.

Q. Yes. Did you read the story: "Portrait Above the Fire Place" at page 56? A. Well, it is again the same old story. You can call it above the fire place or below the fire place or at the side of the fire place. It is another opportunity to display a couple of thighs, a couple of legs, slit, and everything else.

4511

Q. You are off the track, Doctor. The picture hasn't any relation to the story and I wasn't asking about the picture. The Post Office Department does not complain about the picture. Do you complain about it? A. I pointed out several pictures I thought were obscene and they didn't think so. Our minds don't run the same. Isn't it fortunate?

Q. Yes. Let's get away from the photograph and you tell me if you read the story "Portrait Above the Fire Place". A. I don't think so.

Q. Well, let's take another one. Page 104— A. I might have read in the original if it was pointed out to me with that red mark, the hand, I might have read it, but I don't recall it.

4512

Q. Did you read this: "The Sporting Scene" on page 104? A. I don't remember that.

Q. You don't remember that? A. No.

Q. Finally, in the November issue this cartoon about the soldiers at the U. S. O. you found to be unobjectionable, did you not? A. Well, it is very mildly suggestive because it implies that they want something more tangible than cigarettes.

Q. Wouldn't you think that the large water pipes were more tangible than cigarettes? A. It all depends on how



*Benjamin Karpman—for Post Office—Cross.*

you look upon it. It might. I don't see any great objection to that because here again you have that peculiar posture that seems to accentuate certain sexual parts, but it is not so very much.

4513

Q. Now, I show you what purports to be a photograph of a nude figure with her back towards you. Do you see that?

A. Yes.

Q. Would you say that that nude was in a recumbent position? A. I think she is lying down on the grass or the beach or somewhere.

Q. Do you think that that would be sexually stimulating?

A. A very, very little bit, some perhaps. You see here the buttocks—but they are not particularly accentuated. I wouldn't say that they are particularly obscene. I wouldn't say so.

4514

Q. You wouldn't say this is particularly obscene? A. Although I do think that showing what we call the sink of the buttocks, I mean the slit between the two cheeks, is somewhat suggestive.

Q. Would you think that would stimulate an undercurrent of sexual tension in the beholder? A. I doubt it. I think it is more on the vulgar side than on the obscene side.

Mr. Bromley: Will you mark for identification PM Weekly for November 16, 1941?

4515

(The document above referred to was marked Respondent's Exhibit No. 130 for identification.)

Chairman Myers: Will you let Mr. O'Brien see it?

Mr. O'Brien: The same objection as to the last week's Colliers.

*Benjamin Karpman—for Post Office—Cross.*

4516

Chairman Myers: It is admitted.

(The document heretofore marked Respondent's Exhibit No. 130 for identification was received in evidence.)

*By Mr. Bromley:*

4517

Q. Doctor, I show you a photograph of a girl in a thin costume. Would you say that photograph was sexually stimulating to the beholder? A. I would say so, because you do not find in normal life, in daily relations, a young woman in this position.

You have here again the suggestion of the breasts, the waist, the buttocks, the thigh, and the slit. They are all monotonously the same.

Q. Would you be able to recognize that, Doctor, as a photograph of a Varga girl from the motion picture "Du Barry Was A Lady"? A. I don't remember that.

Q. Did you know that the picture of that girl was shown from the screens of thousands and thousands of theaters of this country? A. So what? Does that lessen my statement? It still remains a sexually suggestive picture. If it is shown in the White House, it still remains a suggestive picture.

4518

Mr. Bromley: Will you mark it for identification, please?

(The document above referred to was marked Respondent's Exhibit No. 131 for identification.)

Chairman Myers: I had a recollection those were put in evidence in your defense.

*Benjamin Karpman—for Post Office—Cross.*

Mr. Bromley: No, sir. I had them out here, but I never was able to get them in. There is a Life spread of them, but it doesn't contain the picture of this girl.

4519

Chairman Myers: That is what I had in mind. I know the pictures in Life were admitted.

Mr. O'Brien: I object to this. In the first place, there is no identification of the picture except that counsel is on the witness stand and makes a statement in testimony as to what it is.

Second, there is no showing that it is a Varga girl and it certainly doesn't look like any we have seen or that she appeared in the motion picture "Du Barry Was A Lady" in that particular costume. I saw that picture and never saw the costume. I have as good a recollection as counsel has.

4520

Chairman Myers: What about the identification?

Mr. Bromley: I offer it for identification merely because he has testified about it, and it goes to his standards. I admit I have not proved it as a part of the picture and I don't think I have to.

The Witness: But your statement that it is has made an impression upon me and might have prompted me to make an answer which I would not have made otherwise.

Chairman Myers: Let me admit it for what it is worth. There seems to be some doubt about identification.

4521

(The document heretofore marked Respondent's Exhibit No. 131 for identification was received in evidence.)

*Benjamin Karpman—for Post Office—Cross.*

4522 *By Mr. Bromley:*

Q. Let me show you Life for March 9, 1942, at page 45. A. Is Life on trial too?

Chairman Myers: Is that one of the exhibits, Mr. Bromley?

Mr. Harding: That is not, no.

The Witness: Is Life on trial too?

Mr. Bromley: Would you mind waiting until I get through with my question and then I will answer yours?

4523 The Witness: All right, but I cannot be on ten trials at the same time.

*By Mr. Bromley:*

Q. You can't be? A. No.

Q. Does it confuse you? A. I have not prepared for that.

Q. Take a good look at it and tell me whether you think those pictures have a tendency to corrupt morals, will you?  
A. I think this is obscene and vulgar as well.

Q. When you say "this", do you mean the whole page? A. This picture here (indicating).

4524 Q. You point to the top left-hand one, do you? A. Yes.

Q. Look at the next one to the right. A. Also the same thing.

Q. And the two at the bottom? A. It is about the same. They are all the same, vulgar as well as obscene, to my mind.

Mr. Bromley: I offer in evidence this issue of Life for March 9, 1942, calling particular attention to page 45, the paintings about which the witness has testified.

Mr. O'Brien: The same objection as to the others.

*Benjamin Karpman—for Post Office—Cross.*

Chairman Myers: Same ruling.

4525

(The document above referred to was marked Respondent's Exhibit No. 132 and was received in evidence.)

*By Mr. Bromley:*

Q. Doctor, in analyzing the material in *Esquire*, do you make any distinction between the act itself and a description of the act? A. Usually the description tries to explain the act if the act is not self-evident.

For instance, take the picture of the two soldiers where the man says: "No use, Sarge, we are overpowered".

4526

Q. "No use arguing". A. Now, without the description there, without the use of that sentence, the picture loses half its value, a good deal of its value,

The description supports the picture.

There are, of course, pictures that are self-evident, you don't need a description, it is implicit in the picture itself, but take a picture like that without a descriptive note and it almost loses its meaning.

The majority of people probably wouldn't understand it. They know something is there, but what it is they don't know.

So the description, to my mind, often supports the picture.

4527

Q. Well, I was directing your attention to this situation. Do you draw a distinction between what a prostitute does in her profession and the use of the word "prostitute" in an article or a story or a joke? A. Well, you see, the use of language implies an awful lot of imagination. Every word that we use is a condensation of a large number of words. Therefore, when we use a word there is in our mind a picture of what the word connotes.

*Benjamin Karpman—for Post Office—Cross.*

4528 We really speak in images. The words are merely the external expression of it. When a man reads the word "prostitute", there comes before his mind a particular type of woman in a particular specific setting. And, of course, if his imagination works along that line, he will picture what a prostitute does.

Some will not go that far. Some will go farther. With some it will linger a little longer and probably they will try to create some pictures connected with prostitution.

Q. So, from that I conclude that you think that the use of the word "prostitute" may be just as bad as the act which she does? A. I don't know that it is just as bad.

4529 Q. Well, almost as bad. A. It creates a picture in the person's mind.

Q. Of what she does? A. Of what she does, and what he will do about it, I don't know. It all depends upon the man. It is not conducive to noble thoughts—not very much.

Q. And, therefore, you believe that the use of the word "prostitute" is something again which stimulates the undercurrent of sexual tension? A. Not all the time. For instance, if you get a description of the war situation in Europe and we say "Hitler has abolished prostitution in camps." I don't think it will bring anything to the person's mind. He probably won't stop to think about it. It depends on the setting and how it is used.

4530 Used in a certain sense it is one thing; use it in conjunction with other words and other settings and it is another thing.

Q. If you describe the life of some people in the—what we call behind-the-tracks—the lower class of people, the common people, and perhaps describe the sex life of these people and if you use the word "prostitution" there it has one connotation. If you use the word and nothing immoral is described.



*Benjamin Karpman—for Post Office—Cross.*

it has a different connotation. It depends upon the setting, the text and the man.

4531

Q. I want to get you to draw that line for me. You said if somebody read that Hitler had abolished prostitution in Army camps— A. It would have created a picture in his mind of what had been before and he would go to the next paragraph and forget about it.

Q. Then it would stimulate some mild sexual thoughts? A. Every time we use a word we try to get an image of the word. We read in images and every time we read the word "prostitution" it is bound to create in our mind the picture of what prostitution is.

4532

How long it will linger and what effect it will have on the individual, depends on the individual and the contact and setting and the use.

Q. In the connection you have just given us, in connection with the sentence about Hitler, you say the sex stimulation would be mild, do you? A. I don't know there would be a sex stimulation. There would be a picturization of what prostitution is and that is all there is to it.

Q. What do you say about the reference in the story "Offensive on the Home Front", where it says: "Once the husband had slapped a prostitute in Bordeaux." A. That is suggesting sexual activity. Some men are not interested in normal intercourse and get their entire satisfaction by slapping women.

4533

Q. Don't you know the story shows that the reason the husband slapped the prostitute was because the prostitute had stolen his cap and wouldn't give it back? A. That may be true, but still the connotation would be created in the mind of certain readers which connotes what we call sadistic tendencies.

Q. And you think that material would be objectionable

*Benjamin Karpman—for Post Office—Cross.*

4534

because it appeals to people— A. A certain type of perversion.

Q. A certain type of perversion? A. Yes.

Chairman Myers: Is your comparison based on a speculation as to what may appeal in the different minds of different people?

The Witness: Yes. For instance, there are patients that I have whose entire sex life is centered on slapping buttocks, we will say. To other people it would not appeal at all. It would make no impression on them.

4535

The second type people reading that would pay no attention to that. They would probably see only what this gentleman says there about the cap, but the first type of man will get a hold of it and it brings his mind to something that is familiar to him, slapping on the buttocks.

There aren't very many men like that, but there are some who will pick out that particular sentence and try to squeeze out what stimulation they may.

4536

Q. Then, you would find objection to a story describing a father as spanking his daughter? A. That is different. The purpose is not sexual. The purpose is punitive.

Q. Do you think because a story says the man slapped the prostitute because she stole his cap, that makes it sexually stimulating? A. I say some people will pick out that part as a sexual stimulation to them. I do not say all people; I do not say the majority of people.

Q. Doctor, I assume you are in favor of a full and frank discussion of venereal diseases in the press and elsewhere, aren't you? A. That is a tender topic with me.

*Benjamin Karpman—for Post Office—Cross.*

Q. It is? A. I don't think it is handled properly. I don't think you can take an 18 year old boy and off-hand begin to talk to him about venereal disease. Preceding that there should be a complete sex education. He should know the complete physiology, the complete whole human body.

4537

When an adolescent is taught the function of the human body and the sexual life included, then it is time to begin to talk in an entirely scientific and objective manner about venereal disease, but in the majority of cases we use venereal disease as a bugaboo to frighten people away from sex, not to teach them about sex in a normal way.

It is like the old-fashioned preacher used to tell the boys that if they masturbate they will become crazy, your bones will break and your body will fall apart, which did not have any truth in it.

4538

It was done for the purpose of frightening people.

I don't believe the discussion of venereal disease should be used to frighten people. There is nothing frightening about sex if presented in the proper manner.

Q. Are you opposed to the current tendency to write frankly about venereal disease? A. I would say a great deal of it is not presented properly.

Q. Do you think it is harmful to readers generally? A. I don't think a popular magazine is the place for a discussion of venereal disease. That should be discussed in a popular magazine like Hygeia, which is published by the medical association.

4539

Q. Are you a reader of Life magazine? A. Not very much, occasionally.

Q. Did you read and are you familiar with the spread it published in 1938 showing by text and illustration "The Birth of a Baby"? A. I think I remember that, something of that kind. Was that by Dr. Goodmaher or is it taken from—

*Benjamin Karpman—for Post Office—Cross.*

4540

Q. No, it was taken from a motion picture film showing the birth of a baby. Do you remember that? A. I have a vague recollection.

Q. Do you recall that those pictures were attacked as having a tendency to corrupt morals? A. I do not recall, but I would not be in favor of publishing them in Life. It may be perfectly all right if properly presented, but I do not think Life is the place to publish about the birth of a baby. That should be done in school.

4541

Mr. O'Brien: I don't remember anything in Esquire that is comparable to the spread, if there was one—

Chairman Myers: I think this happened when you were out of the room and it was introduced. That is one of the exhibits, isn't it?

Mr. Hassell: No, it was not. It has not been advertised to.

Mr. O'Brien: It seems to me nothing in here is analogous to any of the pictures or criticisms made of Esquire. It doesn't seem to me to have any bearing.

Mr. Bromley: I offer it as material on the question of what the expert's standards are in judging the material in Esquire.

4542

Mr. O'Brien: I think he has been very definite without going into child birth practice.

Chairman Myers: Of course, counsel has a right to question him on any point that arises in his mind.

*By Mr. Bromley:*

Q. Will you look at these pictures in Life and tell me whether you think they have any tendency to corrupt morals?

A. I don't think so, because the whole intent and purpose of the picture is educational.

*Benjamin Karpman—for Post Office—Cross.*

You do not sense any attempt on the part of the people who present the picture to even suggest the morality. It is educational.

4543

This is the anatomy of the female pelvis and I really don't think it has a place in here because anatomy is a very complicated thing and the average layman will not understand it.

I often am in the position where a patient wants to know or has to know for purposes of treatment the anatomy of the male or female pelvis, and I have a textbook on anatomy and it takes me hours to explain that. If it is put here, you are not going to learn a thing from that. You just see something and don't know what it is.

4544

*By Mr. Bromley:*

Q. What is your position, Doctor? Do you object to it or don't you? Now you have said it both ways. A. I don't object to it as a subject of obscenity because I don't think it is obscene, but I don't believe that Life is a place for it; I think it ought to be taught in schools and in special journals.

Q. And that is the same position you take on articles about venereal diseases? A. Yes, sir.

Q. Doctor, I want to read you an Army joke of the kind we have been talking about, and ask you whether you find anything sexually stimulating or objectionable in this:

4545

"One strip had Caniff's famed shapely Burma entertaining Yanks at a dinner at which food was hauled in by slave girls apparently unclad from the waist up. As bulge-eyed soldiers stared entranced, Burma asked, 'Why don't you guys eat? Is something too spicy?'"

"In another, soldiers staged a camp show, using cante-loupe to give feminine allure to their flat chests. In the last



*Benjamin Karpman—for Post Office—Cross.*

4546

panel a tough Yank spotting well-built Burma yells, 'Hey, you, hurry it up. I gotta get all them melons back to the 'mess hall.' "

What is your opinion of that description, Doctor? A. I don't see much point to it; I don't think it is clever; I don't think it is particularly dirty. It is a little suggestive; it is the type of joke which I would call an artificial joke. It is a joke which has been created for the purpose of producing, squeezing out some sexual suggestion, and it doesn't strike me as particularly clever.

4547

Q. You don't think it is damaging, though? A. I wouldn't say so.

Q. That, however, is typical of Army humor, isn't it, Doctor? A. Yes, possibly so. I wouldn't say typical; I don't make a study of what is typical.

Mr. O'Brien: Just a minute. I move to strike out the question and answer. The doctor has not been qualified as an Army humor expert.

Chairman Myers: He only asked him if he knows.

*By Mr. Bromley:*

4548

Q. Doctor, it is quite customary, isn't it, for magazines of the general circulation type to report night club shows in pictures as well as in text?

Mr. O'Brien: I object to that question as to what the general policy and practice is.

Chairman Myers: Of course, it is only referring to the doctor's general knowledge, isn't it?

Mr. Bromley: That is right.

The Witness: Many do.



*Benjamin Karpman—for Post Office—Cross.*

*By Mr. Bromley:*

4549

Q. Have you ever been to the Folies Bergere night club in New York City? A. I was in Paris.

Q. You were in Paris? A. Yes.

Q. But not in New York? A. No.

Mr. O'Brien: I can't hear you, Doctor.

The Witness: I saw it in Paris. As a matter of fact, when the picture was shown here I immediately identified it as one that I saw in Paris.

*By Mr. Bromley:*

4550

Q. You mean to say you saw the same kind of costumes or the same kind of show? A. The same kind of costumes; the general distribution about it was the same. I think at that time there was no Folies Bergere in New York.

Q. I believe that is right.

Chairman Myers: Did you stop at Pere Oberg's and get some roast chicken?

The Witness: I have a diary at home. If you want, I will bring it over. Moulin Rouge is a good place to go to.

4551

*By Mr. Bromley:*

Q. I show you a picture from Life, page 63, Respondent's Exhibit 18, and ask you what is your opinion of that photograph from this same night club show. A. I think it is very suggestive.

Q. Very suggestive? A. Yes.

*Benjamin Karpman—for Post Office—Cross.*

4552

Mr. Cargill: I can't hear the witness.

Mr. O'Brien: Keep your voice up, Doctor.

The Witness: I think it is very suggestive.

*By Mr. Bromley:*

Q. Do you think it would stimulate the undercurrent of sexual tension? A. I think so.

Q. Do you find in that what you have described as an emphasis upon the breasts, the buttocks, the leg? A. Yes.

Q. And so forth? A. Yes. In fact, I think it is a mistake that it got into Life; it should have been in Esquire.

4553

Q. What about the picture in this exhibit on the next page, what do you say about that? A. Nothing much.

Q. Do you see that the breasts are exposed? A. Yes.

Q. And the navel is exposed? A. Yes, I know, but it doesn't give the impression—

Mr. O'Brien: I can't hear you, Doctor.

The Witness: It doesn't give the Impression of obscenity.

*By Mr. Bromley:*

4554

Q. Does the first picture give the impression of obscenity, on page 63, to you? A. This one (indicating)?

Q. Yes. A. Yes, it does.

Q. But not on page 64? A. No, because here the legs aren't exposed, you don't see the thighs, you don't see the buttocks.

Q. Is this picture on page 68 obscene in your opinion, Doctor? A. No, it is nothing unusual that you find in pictures.

Q. Well, is it obscene, Doctor? A. I wouldn't say so.

*Benjamin Karpman—for Post Office—Cross.*

Q. You would call it suggestive, though, wouldn't you?

A. That is right, that is suggestive. It would arouse a mild undercurrent of sexual tension.

4555

Q. The picture on page 66 of Lee Sherman, is that obscene or suggestive? A. The same as the other one.

Q. Well, which, obscene or suggestive? A. Suggestive.

Q. You have heard the nursery rhyme, "Hi, diddle, diddle," haven't you? A. No, I didn't, because when I was an infant I was in Russia and they had different songs over there.

Q. So you aren't familiar with it? A. No, I am not familiar with it.

4556

Q. Did you tell the Board that you couldn't find the word "diddle" in your dictionary of pornography which you consulted? A. I never consulted it.

Q. Didn't you tell the Board that? A. I knew that the word "diddle" had a sexual connotation, and I asked several people in the hospital to verify it, and they just confirmed it.

Q. I believe you said yesterday that you looked it up in your pornographic dictionary and you couldn't find the word "diddle." A. I don't have a pornographic dictionary. Did I say pornographic dictionary? A dictionary that I have?

Q. Yes, you did. A. I have—oh, I have a private, in my mind, a private dictionary of my own. I don't have a dictionary. I should have said quotation marks but you can't put quotation marks when you talk.

4557

Q. What you meant is— A. I have a private dictionary of my own which I get from patients. I have a dictionary, for instance, on homosexuality.

Q. At page 1436, you said, "It is hard to say just what he meant because I never came across a sentence like 'lowering

*Benjamin Karpman—for Post Office—Cross.*

4558

the boom.' I have a dictionary of pornography with all sorts of pornographic words." A. I mean a mental dictionary. I don't mean an objective book with words alphabetically arranged.

Q. Well, did you say that or didn't you? A. No, I didn't.

Q. Well, now, do you say that having consulted your mental dictionary you don't find that "diddle" has any dirty meaning? A. I don't say that. I say that "diddle" meant to me engaged in preliminary sexual activity, which in the scientific language is called "before pleasure activities," and to make sure I asked several people in the hospital and they confirmed that.

4559

Q. Will you look at this dictionary, being the standard Universal Dictionary, under the word "diddle," and tell me what meaning you find there? A. Yes, I see it is marked here, "To cheat," also "To borrow."

Q. You see that it also says in the line below that it has some other meanings? A. To toddle, to jog, to dawdle. Yes, I suppose it has several meanings. I didn't know the other meanings; I am very frank to tell you that. The only meaning I knew was with the sexual connotation.

Q. Have you had occasion, Doctor, to be on public swimming beaches very much in the last few years? A. I have been to some.

4560

Q. Are you reasonably familiar with the type of women's bathing suits now being worn on those beaches? A. Well, they change so quickly it is hard to keep up with them.

Q. Well, would you say you have some reasonable familiarity with them? A. Well, I would say that they don't cover very much.

Q. Look at the October calendar picture in the January issue. Wouldn't you say that that girl had on a red bathing suit? A. It might be.

*Benjamin Karpman—for Post Office—Cross.*

Q. Don't you think that she is lying back down on a spring-board with her head hanging over the end, Doctor?

4561

A. Yes.

Q. Now, do you think that that bathing suit is any more extreme than those you see in the summertime on many, many beaches? A. So far as I can see, it accentuates rather prominently several parts of her anatomy.

Q. But do you think it is any more revealing than the normal ordinary type of women's bathing suits worn today? A. I wouldn't think so. Some of the bathing suits are anything but bathing suits.

Q. And the bathing suits to which you have just referred would stimulate an undercurrent of sexual tension in normal people, would they not? A. Well, of course, you have to look at a picture as one thing, and to go on a beach and watch women over there, that is a little different thing. You are almost prepared for stimulation over there.

4562

Q. Would you say that to look at a live woman on the beach would in the normal person be more stimulating than to look at a picture, Doctor? A. It might. It depends on the circumstances. I say here you don't see anything else but sex. Over there you have a large setting, a beach where you may have a party and you go out with people and you may not pay attention to that.

Q. Suppose you are sitting right next to one? A. I think it would be stimulating. Wouldn't it to you?

4563

Q. Very much, Doctor. I show you this advertisement of Cole's bathing suit. Don't you find that the bathing suit as represented on that Exhibit 24 of the Respondent is considerably more revealing than the October Varga girl picture? A. I don't know whether it is more revealing; it is a different picture; it represents something different.

Q. Well, doesn't the bathing suit reveal more of the body

*Benjamin Karpman—for Post Office—Cross.*

4564 in the Cole advertisement than does the bathing suit in the October Varga girl calendar in the January issue?  
A. I don't think so. It all depends—I am judging it by the effect it has on the individual.

Q. Well, I want you to first answer this question: Doesn't the Cole bathing suit reveal much more of the human body than the red bathing suit does in the October Varga calendar? A. I think it will have about the same effect, without reference to what is revealed and what is concealed. I am talking about the effect.

4565 Q. I am talking about the bathing suit. Wouldn't you say that the Cole bathing suit bares the midriff completely, whereas the red bathing suit in the October Varga girl calendar covers up the midriff? A. Again I am coming back to this, I am talking about the whole effect.

Q. You say they are the same? A. I don't say that they are the same.

Mr. O'Brien: Mr. Chairman, if counsel will let the witness answer the question, we will get it into the record.

The Chairman: Yes, let him answer.

Mr. O'Brien: He is cutting him off in the middle and asking him another question.

4566 The Witness: I say that the total effect of the whole is about the same. There may be a difference here and there, of course there are, otherwise they would be very much alike.

*By Mr. Bromley:*

Q. Now, forgetting about the total effect, there is a vast difference in the bathing suits, isn't there, because the



*Benjamin Karpman—for Port Office—Cross.*

Cole bathing suit is in two pieces and the red one is in one piece? A. Well, sometimes two pieces will have a less effect than a one-piece, depending on the individual, the time, and the setting.

4567

Mr. Bromley: I just want the Board to see what I am trying to get out of him (exhibiting the above-mentioned pictures).

Chairman Myers: Is this a convenient point at which we can adjourn for lunch?

Mr. Bromley: Yes.

Chairman Myers: We will adjourn until 1:30 this afternoon.

4568

(Whereupon, at 12:00 o'clock noon, the hearing was adjourned until 1:30 o'clock p. m.)

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AFTERNOON SESSION.

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(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: Proceed, gentlemen.

4569

Mr. Bromley: May it please the Board, I have been assuming, perhaps foolishly, that the Government has been observing the Board's ruling and excluding their own expert witnesses. I hope that is so.

Mr. O'Brien: Have you seen anyone present during the doctor's testimony whom you consider one of my expert witnesses? If I had one present I would let you know.

*Benjamin Karpman—for Post Office—Cross.*

4570

Mr. Bromley: If you have one present, keep him out, will you?

Mr. O'Brien: Perhaps you think the gentleman in the front row is one of my expert witnesses. Perhaps the Board can tell you to the contrary.

Chairman Myers: I can tell you that he is an expert but not on the subject here at hand.

Mr. O'Brien: He is an expert on figures but not of this type of thing.

4571

BENJAMIN KARPMAN, resumed the stand and testified further as follows:

*Cross Examination by Mr. Bromley (Resumed):*

Q. I show you three photographs of girls in bathing suits. Doctor, and ask you if you would say that those photographs are typical of bathing suits seen today? A. I have not made enough investigation of bathing suit models. It is a little bit out of my field to tell you whether that is called the modern style. I don't know.

Q. Well, look at the one you hold in your hand. Would you say that stimulated an undercurrent of sexual tension in the beholder? A. I think so.

4572

Mr. Bromley: Will you mark the photograph of the lady against the palm tree, for identification?

(The photograph referred to was marked Respondent's Exhibit No. 133 for identification.)

*Benjamin Karpman—for Post Office—Cross.*

*By Mr. Bromley:*

4573

Q. This lady is sitting with her straps dropped from her shoulders. Would your answer be the same with respect to that picture, that it did stimulate an undercurrent of sexual tension? A. It produces a physical impression that is very likely to lead to creation of physical tension.

Mr. Bromley: Will you mark this for identification?

(The photograph referred to was marked Respondent's Exhibit No. 134 for identification.)

4574

*By Mr. Bromley:*

Q. And finally the photograph showing the eight girls in a row. Would you say that to look at that picture would stimulate an undercurrent of sexual tension? A. I think so.

Mr. Bromley: Will you mark this as an exhibit for identification?

(The photograph referred to was marked Respondent's Exhibit No. 135 for identification.)

4575

*By Mr. Bromley:*

Q. Doctor, having in mind these three exhibits for identification which you have looked at, can you tell us whether or not, looking at the girls themselves wouldn't produce the same undercurrent of sexual tension as looking at the photographs? A. What do you mean? If they were alive, on the stage, we will say—

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4576

Q. No, right on the beach, and you were standing beside the camera man who took the picture. Wouldn't the beholder have created in his mind the same undercurrent of sexual tension produced by the photograph? A. It might well.

Q. Indeed, wouldn't that be greater, perhaps, than the photograph? A. It all depends on the individual, the type of background he has, and the personality, and so on.

4577

Q. But for the persons who would be affected by the photographs in the way of sexual stimulation, so far as the undercurrent of sexual tension is concerned, they would be more affected by looking at them alive, wouldn't they? A. Not necessarily. Peculiarly enough, there are some individuals who are more affected by pictures than the living examples.

4578

Q. I know that is true sometimes, but I am trying to get you to say what is the general rule. A. I don't know if I can commit myself to say that anybody who would be affected by the pictures would also be affected by the living persons; he may and may not; often he may, but there are individuals, I have had patients, who will take a picture like this and hold it to their breasts and kiss it and hug it, whereas they were entirely too shy and timid to even dare to look at or touch a live person.

Q. Then this undercurrent of sexual tension varies tremendously from individual to individual, doesn't it, Doctor? A. Not only that, but there are these individual differences that I mentioned which come up from time to time.

Mr. Bromley: I offer in evidence Exhibits 133, 134, and 135.

Chairman Myers: The exhibits have no eviden-

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tiary value themselves. As I understand it, you are just introducing them as a standard of comparison to the witness and that is the only purpose?

4579

Mr. Bromley: That is right, sir.

Chairman Myers: The Board of course will not look upon them as having evidentiary value themselves.

Admitted.

(Respondent's Exhibits Nos. 133, 134 and 135 were received in evidence.)

*By Mr. Bromley:*

4580

Q. Would you agree, Doctor, that the trend in modern-day advertising has been toward greater use of the undraped female figure? A. I haven't made a particular study but I would say that that would be my impression, with the few advertisements I happened to scan. I haven't paid much attention to advertisements as a rule.

Q. Have you found anything corrupting about this increased use of the undraped female figure in advertising? A. I haven't made a study of the effect of advertising on the human being.

4581

Q. Well, this type of advertising is pretty widespread, isn't it, Doctor? You see it in hosiery advertisements, clothing advertisements, tobacco advertisements, and so on. A. I haven't made a study of it and I couldn't tell you. I have the impression that it probably is but I couldn't commit myself in any definitive way.

Q. Well, take a look at this exhibit, Respondent's Exhibit 20, which is the advertisement of the Marelle Bath Foam. Would you say that a picture such as that would

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4582

stimulate the undercurrent of sexual tension in the beholder? A. Not particularly. You see, the picture as such is an advertisement and the ostensible purpose is really to show how wonderful this particular soap or bath powder is. Produced in a setting of this kind, the individual doesn't look particularly for sexual stimulation in this advertisement. I imagine if this picture were taken out of this setting, all this removed (indicating) and just put in like that, it might have a greater suggestive value than in a setting like this.

4583

Q. Wouldn't this man or type of man you spoke about be apt to hug and kiss that figure as well as the other one you looked at? A. He may and may not.

Q. Well, then, so far as you are concerned you wouldn't have any objection to Esquire publishing advertisements of that kind, would you? You wouldn't find anything in there that would have any tendency to sexually stimulate the reader? A. Not particularly, not as an advertisement, but take the whole advertising out and put it in some setting and put the proper environment around and accentuate the body—

4584

Mr. Cargill: I can't hear you, Doctor.

The Witness: I say, take this away, take this picture out of this setting, narrow the advertisement, put in a little different context, perhaps a little drapery, perhaps polish it up, and it would create an entirely different impression. A person doesn't look for sexual stimulation in advertisements as such. There may be advertising that may have a stimulus value, but not as such, but if you take this picture out of its setting and put it in another setting that will accentuate it, then you have an entirely different setting.



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*By Mr. Bromley:*

4585

Q. Well, if any one of those pictures of the Varga girl appeared in an advertisement of Marelle Bath Foam you would find that they had no tendency to corrupt the morals or stimulate the undercurrent of sexual tension? A. I don't think so. I can't see it.

Q. Aren't you able to visualize, looking at this ad now, a Varga girl in place of this naked woman in the bathtub? A. No. I would say some of the Varga girls, the way they are displayed, I think this type would be so prominent, it would obscure the entire advertisement.

4586

Q. Now, what you have referred to is a Hurrell photograph and not a Varga girl on page 88 of the January issue. A. That is right.

Q. You think if that Hurrell photograph were published as an advertisement it would have a sexually stimulating effect, do you? A. I think so, yes.

Q. Is your opinion of this advertisement, being Exhibit 23 in evidence, of Shaleen hosiery, the same as of the bath foam, Exhibit 20? A. I think this is sexually more suggestive and probably more stimulating. You see, you can see the accentuation of the back, the buttocks, the thighs, the slit, the legs.

4587

Q. And, Doctor, what is your opinion of this Linit advertisement, Respondent's Exhibit 41? A. That isn't bad, that isn't bad. But that is, I would say, suggestive (indicating).

Q. I am calling your attention to the Linit advertisement which has been marked Exhibit 41. A. I think that is suggestive.

Q. Very much so? A. Very much so, that is right.

Q. And you say that because the woman is portrayed as

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4588 having large busts and large hips and legs exposed? A. That is right.

Q. That you would classify as very suggestive, would you?  
A. Very suggestive.

Q. That means it would have a strong tendency to stimulate the undercurrent— A. It would have a stronger tendency to stimulate an undercurrent of sexual tension. I don't know how strong it would be, but it would be stronger than the other one.

Q. Are you familiar with the current use of motion pictures featuring pin-up girls and Petty girls? A. No.

4589 Q. Do you know what a pin-up girl is? A. No.

Q. Did you know that a Varga girl was put in this double-page spread for pin-up use? A. You mean to hang on the wall?

Q. Yes. A. I know some people do. I wouldn't have it on my wall; it would be very embarrassing. I know some people cut out Varga girls and hang them on the wall.

Q. I wasn't asking you what you do. I am asking if you are familiar with the present-day custom on the part of many people to pin these pictures up and they are called pin-up girls when they are pinned up. A. I don't know it is a custom. Some people do that. A custom means that a large part of the public does it, and I haven't made a study of how large a part of the public does it.

4590

Q. Do you know many college girls and boys do it? A. I wouldn't say many—some.

Q. Do you know that many soldiers do it? A. Probably.

Q. I call your attention to three pages in Life magazine for August 9, 1943, pages 8, 9 and 11, and ask you if you recognize those three pages as examples of typical pin-up girls. A. I couldn't say that because I have not investi-

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gated what type of pictures boys or girls hang up on the walls. I don't know. I have not made a study of that.

4591

It would be necessary for me to visit some college dormitories and some fraternity houses, rooms where they live and board, and then sum up my impressions, but I haven't done that, so I couldn't tell you:

Q. I see. Would you think that the picture of this pin-up girl, being Betty Grable, had a strong or a weak tendency to stimulate the undercurrent of sexual tension? A. I think definitely to stimulate sexually. I couldn't tell you how strong but it would be very definite.

You compare this girl and this girl and this girl (indicating) and these do not have any special sexual—but this one positively does. Look at the legs and the display of the buttocks and even the expression of the face, and the breast sticking out.

4592

Q. What do you say about this Ann Gwynne pin-up picture? Does that stimulate sex? A. Not very much. There is a little in the breast and perhaps the buttocks. This isn't an unusual type of picture. It is much more toned down than this one.

Q. What about the bottom one on page 10? A. I say the position in which she sits or lies down is suggestive.

Q. Definitely suggestive? A. It is quite suggestive.

4593

Q. Quite suggestive? A. Yes.

Mr. Bromley: Will you mark for identification this issue of Life for August 9, 1943?

(The issue of Life referred to was marked Respondent's Exhibit No. 136 for identification.)

Mr. Bromley: I offer Exhibit 136 in evidence.

Chairman Myers: This is on this same basis of

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4594

just being to illustrate the doctor's standards of comparison?

Mr. Bromley: That is all, sir.

Chairman Myers: Admitted.

(Respondent's Exhibit No. 136 was received in evidence.)

*By Mr. Bromley:*

4595

Q. Now, turning to Exhibit 51, being a double-page spread of pin-up girls already in evidence, will you tell me which of those, in your opinion, definitely stimulates the under-current of sexual tension? A. It is easier to pick out those that don't than those that do, because most of them do.

Q. Pick me out the ones that do—that's what I am interested in, even if that is greater in number. A. This one does (indicating).

Q. The top left-hand one on page 88? A. This one does (indicating).

Q. On the bottom right-hand on page 88. A. This one positively does (indicating).

4596

Q. Bottom left-hand one on page 89. A. This one unequivocally does.

Q. The right-hand one at the bottom of page 89. A. Quite suggestive (indicating).

Q. The top center one on 89.

Mr. O'Brien: Does the Board mind if I watch these pictures rather than having them passed back and forth?

Chairman Myers: I think that is the way to do it.

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*By Mr. Bromley:*

4597

Q. What about these two at the top right-hand? A. This is quite suggestive (indicating). This is somewhat suggestive (indicating). I wouldn't consider this (indicating) at all, except this is vulgar rather than obscene.

Mr. Bromley: These are the double-page spread of the ones we had in evidence, typical British ones.

Chairman Myers: Is that the exhibit right there? You might designate the exhibit number so counsel will be able to find it.

Mr. O'Brien: It is Exhibit 51.

4598

Mr. Bromley: The ones that he said are suggestive are this one and this one and these three and this one and this one (indicating to Board).

*By Mr. Bromley:*

Q. Now, in Exhibit S9, which ones of these pin-up girls do you find possess sex stimulation for the beholder? A. I would say any picture that is attractively taken of an attractive woman would sexually stimulate. None of these are particularly offensive.

Q. What do you think about the exposure of the chest in the upper right-hand, the Rita Hayworth picture? A. Some, not particularly, not very much—nothing unusual about it.

4599

Q. Over the page. A. I would say this one is definitely sexually alluring.

Q. Dorothy Lamour in the lower left-hand corner. Is that right? A. Is that her?

Q. That's her. A. The rest are not particularly offensive.

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4600

Mr. Bromley: The one he points out is the Dorothy Lamour picture here.

Mr. O'Brien: It is the right-hand corner?

The Witness: No, it is the left-hand corner.

*By Mr. Bromley:*

Q. Now, finally, what can you say about this Ingrid, 1942 pin-up girl? A. I think this would be sexually stimulating. I don't see anything in that (indicating) at all.

4601

Q. I am not asking about the right-hand panel, just the left-hand panel. A. I think it is sexually stimulating.

Mr. Bromley: This I ask to have marked for identification, another pin-up girl from PM for September 22, 1943.

(The picture referred to was marked Respondent's Exhibit No. 137 for identification.)

Mr. Bromley: I offer in evidence—

4602

Mr. O'Brien: If the Board please, I object to these if offered in evidence. I object to these or the cross examining of the witness on these and similar publications which show no resemblance in character or content generally to Esquire. It seems to me there is no point in the comparison if there is any comparison to be made.

Chairman Myers: It is only admitted for the standard of comparison and not as having any evidential value itself. It is admitted on that ground.

(Respondent's Exhibit No. 137 was received in evidence.)



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*By Mr. Bromley:*

4603

Q. Have you gone on record, Doctor, at any time, publicly, as condemning the use of pin-up girls or present-day bathing suits or present-day advertising illustrations? A. No, except what I might have said today.

Q. Would you say that our current standards sanction the frequent use of girls' pictures which freely display the curves of the body and the outlines of the breasts and the bare legs and the thighs? A. I would say that in some situations it does. I wouldn't say all the way through. You are not likely to find it in society columns of women.

4604

Q. Of newspapers, you mean? A. Newspapers, for instance. I doubt if a society woman who considered her reputation would allow her picture to be taken in a bathing suit or show such a free use of her body as some of the Varga girls do.

So you have to qualify. In some places they don't. Some women do and some women don't.

Q. Well, hasn't there been a great change in the last twenty years, Doctor? A. Yes, I said so. It is a well-known fact.

Q. I call your attention, Doctor, to a series of pictures of Carole Landis appearing in Life for June 30, 1941, at pages 59 to 61, being Respondent's Exhibit 56, and ask you your opinion of those pictures, as to whether you think they create this sexual stimulus of which you have so frequently spoken? A. I think these do. (Indicating.)

4605

Q. Referring to the ones on page 59.

Turn to the next page, please, pages 60 and 61. Is your answer the same? A. I would say it is about the same, the position is rather almost vulgar and the same thing here (indicating).

*Benjamin Karpman—for Post Office—Cross.*

4606 Q. And on the next page? A. I don't see anything here, a little daring; a little bare leg, not much.

Q. In the pictures on the first page, 59; would you say those pictures display an over-emphasis of breast? A. No. It shows the breasts are covered, but the covering suggests the position, but I would say there is no over-emphasis.

Q. What about the rest? A. Here (indicating).

Q. In the top picture you say the top picture of Carole Landis illustrates what you call an over-emphasis of the breasts; is that right? A. Some over-emphasis. There are different degrees of over-emphasis.

4607 Q. But this is the same emphasis? A. That is right. I don't see anything here. (indicating).

Mr. Bromley: I want to show that top picture to the Board. That is what he meant by over-emphasis.

*By Mr. Bromley:*

Q. On the next page you have what you call again an over-emphasis of the buttocks? A. Yes.

Q. In many of these pictures you have that, haven't you? A. Here is one (indicating).

Q. You refer to the top picture on page 60? A. Yes.

4608 Q. And the others? A. This is not a particular modest way of lying down.

Q. You refer to the second picture on page 60? A. Yes. The poses are suggestive, that is all I can say.

Q. In the bottom picture? A. Yes, suggestive.

Mr. Bromley: He refers to the buttocks in that picture and in the bottom picture (indicating).

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*By Mr. Bromley:*

4609

Q. In Respondent's Exhibit 58 we have heretofore made reference to a cover being a photograph of Rita Hayworth in a bathing suit. A. Yes.

Q. In your opinion, does that picture stimulate an undercurrent of sexual tension? A. Oh, yes. There is the breast and the nates here.

Mr. O'Brien: A little louder.

The Witness: There is the breast.

*By Mr. Bromley:*

4610

Q. And the thigh? A. What is that?

Q. The thigh. A. No. The buttocks, the thigh.

Q. And the navel? A. The navel.

Q. So, you say that there is definite sexual stimulation to be found in that picture, do you? A. I think so.

Q. Now, will you look at this two-page spread of Carmen D'Antonio dancing and tell me whether, in your opinion, that series of pictures would strongly stimulate, in your judgment, the undercurrent of sexual tension? A. I think it would by and large. The display of the legs, the display of the breasts, the suggestive position. This particularly shown by the bending, showing the buttocks and the thigh.

4611

Chairman Myers: What is that exhibit?

Mr. Bromley: That is not yet in.

Will you mark this issue of Life for September 16, 1940, for identification?

(The document above referred to was marked Respondent's Exhibit No. 138 for identification.)

*Benjamin Karpman—for Post Office—Cross.*

*By Mr. Bromley:*

Q. Now, you realize, don't you, that that is a report on the performance of a night club dancer? A. That is right.

Q. You refer particularly to again the thighs, the legs, the buttocks, the navel and the breast, do you? A. That is what they emphasize in all night clubs, don't they?

Q. Yes. A. What do you go to night clubs for?

Q. I go to eat. What do you go for? A. Oh, there are lots of restaurants.

Q. Now, which pictures do you say are particularly objectionable in this one? A. I would say this particular one (indicating).

Q. The left hand one at the top? A. Yes.

Q. And the right hand one, page number 59? A. Yes, and this one (indicating).

Q. And the one right underneath it on page 59? A. That is right.

Q. As a matter of fact, Doctor, I take it from what you just said to me, that you would find most musical comedies and most night club floor shows to be sexually stimulating to most people? A. To the—

Mr. O'Brien: Now, just a minute. I don't know whether the Doctor has seen most night clubs or most musical comedies or whether he is acquainted with the contents of them.

Chairman Myers: Well, he would say so if he hadn't.

Mr. O'Brien: Well, the way counsel is asking the question I don't think he gives the witness a chance to say what he wants to say.

The Witness: Will you read the question?

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Chairman Myers: Read the question to him, Mr. Reporter. See if he understands it.

4615

(Question read.)

The Witness: I think most people that go over there go for the purpose of stimulation.

*By Mr. Bromley:*

Q. And, therefore, in your judgment they are sexually stimulated? A. I would say most of them suggestive anyway.

4616

Mr. Bromley: I want to show the Board these pictures.

Chairman Myers: Are you offering them in evidence?

Mr. Bromley: Yes.

Mr. O'Brien: The same objection.

Chairman Myers: The same ruling. They are admitted.

(The document heretofore marked Respondent's Exhibit No. 138 for identification was received in evidence.)

4617

Mr. Bromley: Will you mark for identification an issue of Life for January 6, 1941?

(The document above referred to was marked Respondent's Exhibit No. 139 for identification.)

*Benjamin Karpman—for Post Office—Cross.*

*By Mr. Bromley:*

4618

Q. In Exhibit 139 for identification at page 19, what is your opinion of the picture therein displayed? A. I think it is sexually suggestive.

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 139 for identification was received in evidence.)

4619

Mr. O'Brien: I think too, Mr. Chairman, that this whole line of cross examination has been pursued with sufficient length to establish what counsel had in mind.

Chairman Myers: We will let him proceed.

*By Mr. Bromley:*

4620

Q. Now Doctor, pictures such as these I have shown you are found generally in magazines of current circulation, are they not? A. I wouldn't agree with your statement. You say are found generally in magazines of current circulation. You haven't shown me all the pictures that are found in all the journals. I don't know whether this represents 25 per cent of the pictures or five-tenths of one per cent. You have been very selective in your treatment of these people; you have picked out pictures that particularly suited your purpose in your cross examination. I haven't seen the hundreds and thousands of pictures that are in all the magazines.



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Q. Yes, there are a great many other pictures, Doctor, in the magazines. I wanted to find out whether, in your judgment, these pictures such as I have shown you were not uncommonly being published. A. I don't know whether they are uncommon or not.

4621

Q. You don't? A. If you will make a statistical study of all the pictures that are found in Life for the last six or seven years of its publication and then pick out the so-called sexually stimulating pictures and make a comparative study and show me whether it shows 90 per cent or 9 per cent or 10 per cent, then I could answer you.

Q. Are you familiar with magazines such as Life? A. Yes.

4622

Q. And Colliers and Time? A. More or less.

Q. More or less? A. Yes.

Q. Then you know that the pictures which I have shown you from Life are fairly representative of lots of pictures, don't you? A. I don't think so. It is not my impression; you have been very selective in your choice here.

Q. Don't you know that every issue of Life has a theatrical review or a night club spread? A. I don't think so; they are not all selective of the type of picture you have shown me.

Q. Well, I will show you Life for July 5, 1943. Respondent's Exhibit 9, and ask you your opinion of the page beginning at 86 and running over to 90 in connection with the article entitled "Bare Legs".

4623

What about the picture on page 86? Does that stimulate the undercurrent of sexual tension? A. I think it will attract physical attention.

Q. Well, does it have sexual stimulation about it? A. It has a sexual connotation, I would say.

Q. What about the picture of the girls with their legs up in the air on page 89? A. I think it is bad.

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Q. Bad? A. Yes.

4624

Q. You think that stimulates sexual thoughts? A. Not only that, but it is both sexually stimulating as well as vulgar, I would say.

Q. What about the picture on page 90? A. You mean this (indicating)?

Q. Yes, the top. A. It is a rather suggestive pose, but I wouldn't go any further than that.

Q. In Respondent's Exhibit 113, I show you a series of 12 Varga girl pictures and ask you if you find anything in any one of them which would stimulate this undercurrent of sexual tension? A. I don't think this would. There is nothing there.

4625

Mr. O'Brien: Now, Mr. Bromley, he is saying "I don't think this would". They are marked by months.

*By Mr. Bromley:*

Q. Well, will you look at that, Doctor? A. Yes.

Q. And tell me whether you have the same opinion with respect to these 1942 Varga calendar drawings as you testified with respect to the January, 1943, Varga calendar drawings? A. I would ignore the January picture. I think the first reaction that anyone would have to that would be "Oh, boy", I think it is definitely sexually stimulating.

4626

Q. That is February, is it? A. Yes.

Q. What about March? A. That is suggestive.

Q. What about April? A. It is more suggestive.

Q. And May? A. Very suggestive.

Q. And June? A. I would say suggestive.

Q. And July? A. Bad.

Q. By the way, you find that the picture of a girl with

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this white bathing suit on is much worse than the girl with nothing on at all, do you? A. Yes. People as a rule are attracted to something that is a little bit concealed so their imagination plays around that: if they see something naked, it doesn't make the same impression on them.

4627

Q. I don't understand you, Doctor. You mean the more clothes the more suggestion? A. No. If there is just a little bit of clothes, just enough to cover but you can see through the clothes, the outlines of certain parts of the anatomy, it creates, it acts more of a stimulus than one entirely naked.

Q. You can't see through this white bathing suit, can you? A. I can see the outline of the breasts.

4628

Q. Well, you could see the outline of the breasts in any article of clothing, couldn't you, that fitted with a reasonable degree of snugness? A. Not necessarily.

Q. What about a sweater? A. You don't see much of the outline there.

Q. You don't see much of an outline of the breast in a sweater? A. Not necessarily. You may. Some girls draw it very tight and some girls wear it loose.

Q. What do you say about the August? A. I would say very suggestive.

Q. September? A. Also very suggestive.

Q. October? A. I can't find a word for it; it is bad, anyway.

4629

Q. November? A. That's suggestive. I would say it is suggestive.

Q. Your finger lingered over the crotch and the chest. Is that it? A. That is right.

Q. You mean to point them out? A. Yes.

Q. That woman has a full white evening gown on, hasn't she? A. I would offer this—is this a part of an evening gown, here (indicating)?

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4630

Q. What do you think it is? A. I think it shows something of the pubic region to me, doesn't it?

Q. It shows something of the pubic region? A. Yes.

Q. What about December? A. I think it is suggestive.

Q. December is nothing but a typical ordinary ballet costume such as any dancer in any ballet in any theater in the world would appear in, isn't it? A. That may be.

Mr. O'Brien: Just a minute. Has the witness been told that or is he asked to agree with that?

Chairman Myers: I think it is just a statement.

4631

The Witness: It is just my opinion.

*By Mr. Bromley:*

Q. Yes? A. What?

Q. You said "Yes"? A. Yes.

Q. Look at this Sultan cartoon for March, 1941. Do you find anything sexually stimulating in that Sultan cartoon?

Mr. O'Brien: What exhibit number is that?

Mr. Bromley: Exhibit 103.

The Witness: I don't see very much. It suggests that it is not an easy thing to get these girls through a British blockade, but I wouldn't say it is particularly suggestive as a whole.

4632

*By Mr. Bromley:*

Q. You would say it is not an easy thing to get the girls through the British blockade? A. Yes.

Q. Is that your opinion with respect to the cartoon from the April, 1941, issue, Exhibit 104? A. It suggests a woman

*Benjamin Karpman—for Post Office—Cross.*

for sale and to that extent it is suggestive, but I wouldn't go beyond that.

4633

Q. Would you say that any textual reference to the custom of selling women was likewise mildly suggestive? A. I think so, because even in our society some women are for sale, as it were, I mean the sex part is for sale, and it brings up a suggestion which is likely to linger.

Q. That is, you think it is bad taste? A. That is right, bad taste.

Q. Now, in July, 1941, at page 62, Exhibit 107, there is nothing to object to in that Sultan cartoon, is there? A. I don't see nothing there.

4634

Q. And in the Sultan cartoon for October, 1941, Exhibit 110, again there is nothing to object to; is there? A. Nothing particularly.

Q. And in the Sultan cartoon for December, 1941, page 63, Exhibit 112, there is nothing to object to, is there? A. Yes, there is some suggestion there. First of all, the picture itself is suggestive. I mean the female body, the outline of the breast, the waist, the navel, the slit, the position of the legs, and then the appended sentence here: "I have a friend who can get one for me wholesale," suggesting again the buying of a woman, which is not in very good taste.

Q. And this one from June, 1942, "Have you got that one in a size larger?", Exhibit 118? A. I would say this is bad. I mean, the titling is bad. It looks as if not only sex is for sale, but they are even speaking of sizes and quantities, as if it was a piece of chattel to be thrown about here and there.

4635

Q. Here again you think it is bad because it refers to the custom of selling women, is that right? A. That is right, which is all right in Oriental countries, but we have not adopted it here.

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4636 Q. And, therefore, we shouldn't speak of it or write of it? A. I don't think it would be acceptable in this country.

Q. Is it acceptable to write about it, Doctor? A. I wouldn't.

Mr. O'Brien: I object to that question. In what way? I ask that the method of writing be described. You can write about a thing in a thousand ways, statistically and otherwise.

4637 The Witness: I wouldn't write. I wouldn't undertake for anything to write about it because I have a certain respect for womanhood and I don't want to degrade myself by degrading them and speaking of them in terms of chattels being sold, just like a dog is being sold, a certain breed. I think it is bad taste, very bad.

*By Mr. Bromley:*

Q. What is your opinion, Doctor, as to the sexual stimulation or lack of it complained of in this picture which I show you?

Chairman Myers: What exhibit is that?

4638 Mr. Harding: 85.

The Witness: It outlines rather suggestively the body, the body form, but outside of that I don't see very much.

*By Mr. Bromley:*

Q. Do you think it is suggestive? A. Very mildly, very mildly.

Q. Will you read the text which appears at the side of it?



*Benjamin Karpman—for Post-Office—Cross.*

Read it out loud. A. (Reading): "Now, in front of the looking glass she tardily untied the ribbon of her nightgown and let it slip to the floor."

4639

Q. Now, what does—what is your opinion of the page?  
A. It still doesn't suggest much to me.

Mr. O'Brien: I still don't hear you.

The Witness: It still doesn't suggest much to me. With this explanation it becomes more suggestive because a person looking at the picture without the description will probably not get half of it, but with the description it becomes a little more obvious. I would say it is mildly suggestive.

4640

*By Mr. Bromley:*

Q. You would say that is mildly suggestive? A. I would say that is mildly suggestive.

Q. You would say that is mildly suggestive? A. Yes.

Q. And now, Doctor, I show you a picture on page 77 of this magazine and ask you whether that is suggestive, in your opinion?

Chairman Myers: What exhibit is that?

Mr. Bromley: That isn't in yet.

4641

Mr. O'Brien: What magazine, please?

Mr. Bromley: That is the Reporter magazine.

The Witness: I think it is suggestive. There is the breast covered and it brings to mind the breast, the navel, the slit here, the thigh. I think it is suggestive, definitely so.

Mr. Bromley: Will you mark this issue of Reporter for July, 1943, for identification, please?

*Benjamin Karpman—for Post Office—Cross.*

(The document above referred to was marked Respondent's Exhibit No. 140 for identification.)

Mr. Bromley: I offer in evidence this exhibit.

Chairman Myers: How many more do you have?

Mr. Bromley: This is the last one.

Chairman Myers: All right. It will be received on the same basis. The same objection and the receipt is on the same basis.

(The document heretofore marked Respondent's Exhibit No. 140 for identification was received in evidence.)

*By Mr. Bromley:*

Q. Now, Doctor, you have not studied these eleven issues except the part on the complained of material which you have indicated, have you? A. No, I have gone through a lot of it that was not complained of.

Mr. O'Brien: What is the answer?

The Witness: I have gone through a lot of it that was never mentioned in these citations.

*By Mr. Bromley:*

Q. Have you read the whole magazines? A. No, I just glanced through.

Q. And I take it, therefore, that you could not pass an opinion as a fair minded man upon any one of these issues as a whole without having read them? A. I would say so. As a whole—you are not talking about the parts?

*Benjamin Karpman—for Respondent—Redirect.*

Q. No. A. If you ask about the particular pictures I can give an opinion as to that particular picture.

4645

Chairman Myers: A little louder, Doctor.

The Witness: If you ask about the particular pictures, I can give an opinion as to that particular picture. But I would not commit myself as to the issues as a whole.

It may be that 99 per cent is perfect. Again, 50 per cent may be good and 50 per cent bad, and then the position might be reversed. I only commented on that, in the main, which was cited.

4646

Mr. Bromley: That is all.

Chairman Myers: Have you any questions?

Mr. O'Brien: Just a couple.

Chairman Myers: And you have an exhibit you want to put in.

*Redirect Examination by Mr. O'Brien:*

Q. Doctor Karpman, would the fact that the discussion of the sale of women for sex purposes or a cartoon and text indicating that was the subject being treated, was the subject of the cartoon and text, would the fact that that appeared in Esquire rather than in a serious sociological or other news magazine, have anything to do with the interpretation which the reader might place upon such matter in Esquire? A. I don't know that I can say about other readers. My reaction for the most part would be all the same no matter where it appeared.

4647

I mean, taking it by itself. If I were to see that in a journal like the New Republic I would be very much puzzled as to what purpose the New Republic had in putting it there, but seeing it in Esquire, it seems to be in its proper place.

*Benjamin Karpman—for Respondent—Recross.*

4648

Q. Why? A. Because that is the type of picture they often put in.

Q. What type? A. I mean the type that would appeal to the gross or physical, or physical aspects of sex.

4649

Q. Now, Doctor, you have been shown a number of magazines and other publications and a number of pictures of women on cross examination by Mr. Bromley, and he has asked you numerous questions about them. Has your cross examination changed your mind in any respect as to the opinion you expressed on direct examination concerning the various Varga girls in the January to November 1943 issues of the magazine which I showed you? A. No, it has not changed.

Q. When you speak of sexual stimulation, Doctor, afforded by the Varga girls in the pictures which I showed you, did you or did you not mean that that sexual stimulation included the obscene and the indecent thought? A. Yes, it did.

Mr. O'Brien: That is all.

*Recross Examination by Mr. Bromley:*

4650

Q. You consider, do you, Doctor, any sex stimulation obscene, then? A. No. It all depends on the situation, the setting, and so on. For instance, if you see a dance going on with many couples dancing and women in evening gowns, some of them pretty well exposed, you are just an observer, I would say that this would be sexually stimulating, but it wouldn't be something that would be offensive because it is in a setting that is accepted and it is proper and not much fuss made about it; on the other hand, if you go to a night club and you see a large number of women going on the

*Colloquy.*

stage and displaying their shapely ankles, their buttocks, and their breasts, making a special appeal in that respect, then that is a different proposition.

4651

Q. Well, is it obscene? A. I would say, in my mind.

Mr. Bromley: That is all.

(Witness excused.)

Chairman Myers: The next witness.

Mr. O'Brien: Well, I forgot to offer this exhibit showing the picture of Joan Leslie that I referred to.

Mr. Bromley: No objection.

4652

(The picture referred to, marked Department's Exhibit 63, was received in evidence.)

Mr. O'Brien: Mr. Myers and gentlemen of the Board, we had expected a witness on here this afternoon before this time but he is tied up with some official duties and I haven't been able to secure another one to take his place. In fact, I can't get anyone before tomorrow. We can start tomorrow if that meets with the wishes of the Board.

Chairman Myers: Well, that means we will have to resume tomorrow morning.

4653

Mr. O'Brien: I am sorry, but that is the only thing I can do. As I stated before, it has been difficult for us to get our witnesses on time.

May we meet at 10:00 o'clock tomorrow morning so the witness can get a chance to get down from his office?

*Colloquy.*

4654

Chairman Myers: Couldn't you make that 9:30?

Mr. O'Brien: I am afraid I couldn't. I don't want to make this promise and then keep you all here.

Chairman Myers: I want to get this case out this week.

Mr. O'Brien: I want to make our presentation as brief as possible.

Chairman Myers: Suppose we adjourn until 10:00 o'clock tomorrow morning.

Mr. O'Brien: Thank you.

4655

(Whereupon, at 2:30 o'clock p. m., the hearing was adjourned until Thursday, November 4, 1943, at 10:00 o'clock a. m.)

4656



## HEARING OF NOVEMBER 4, 1943.

4657

## PROCEEDINGS RESUMED.

Chairman Myers: Are you ready to go ahead?

Mr. O'Brien: Yes, sir.

Chairman Myers: All right. Go ahead.

Mr. O'Brien: Doctor Cartwright, will you take the stand, please?

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JOHN KEATING CARTWRIGHT a witness called by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows: 4658

*Direct Examination by Mr. O'Brien:*

Q. Will you state your full name for the record, please?

A. John Keating Cartwright.

Q. Where do you live, Doctor? A. At the Rectory of the Church of the Immaculate Conception, 1315—8th Street, Northwest.

Q. You are pastor of that church, are you? A. I am.

Q. Will you state to the Board, please, what education you have had, Doctor? A. Well, I have had the usual professional education for the Catholic priesthood. Four years of college and four years seminary course in Rome at the American College. 4659

Q. What degrees do you hold? A. Ph. D. and S. T. D.

Q. You are a Doctor of Philosophy, and what is S. T. D.? A. Doctor of Theology; Doctor of Sacred Theology.

Q. In the course of your theological education have you studied subjects relating to psychology or metaphysics as part of your course? A. Well, we have a course in all of our

*John Keating Cartwright —for Post Office—Direct.*

4660

seminaries; we have a course in philosophy which embraces different sections and one, of course, is in psychology.

Q. Now, since your ordination, would you tell us when that took place, Doctor? A. 1916.

Q. Have you been actively engaged in dealing with the pastoral problems of the congregations? A. Yes. All during that time I have been in actual pastoral work, That is, first as an assistant, of course, and in the last ten years as pastor in the church.

Q. Does that bring you in contact with average normal people living in various— A. Oh, yes; hundreds of them all the time.

4661

Q. And do they bring you, in the course of your duties as a clergyman or pastor, their various problems arising from their lives, including, of course, problems relating to sex and morals? A. Oh, yes, we have frequent occasion to know about those problems.

Q. Yes. Now, at the present time, Doctor Cartwright, will you tell us what activities outside of your pastorate you are engaged in in Washington? A. Well, I am assistant professor of pastoral theology at the Catholic University. I have taken an active interest in literature, particularly insofar as it concerns religion and morals in the directorship of what is known as the Critics Forum.

4662

We had a meeting of that Forum at the Mayflower Hotel last night with 700 people present, and we discussed the books of current interest from the point of view of religion and morals in those Forum meetings.

Q. You usually make those reviews? A. Not always. I made it last night. I am director of the Forum and have to choose the books and know a great deal about them before they are reviewed.

*John Keating Cartwright —for Post Office—Direct.*

Q. Do you have any connection with George Washington University? A. Not a direct connection. I am a director of the Catholic Students Club, called the Newman Club, and have been for twenty years.

4663

Q. Now, Father Cartwright, have you at my request examined certain issues of the publication called Esquire from January to November, 1943, inclusive? A. I did.

Q. And have I pointed out to you various items in these several publications which were under consideration before the Board of the Post Office Department, and requested you to express an opinion on them? A. You did.

Q. Yes, Father. Will you tell this Board whether in your opinion the publication as a whole is decent or indecent? A. I consider the general tendency of the publication to be indecent.

4664

Q. What effect do you think the reading of the publication, particularly with reference to the items mentioned, would have upon the average susceptible mind with respect to morals? A. I think it has a tendency to "discourage" low views and low ideas of women.

Mr. O'Brien: May the answer be read back? I think he said "discourage".

The Witness: To encourage low ideas of women.

4665

*By Mr. O'Brien:*

Q. In what respect do you use the phrase "low ideas"? A. I mean indecent and sexual ideas.

Q. Do you think, Father, that the matter which you have considered here is proper matter for public information and public dissemination? A. No, I don't. I don't think that kind of thing needs any encouragement.

*John Keating Cartwright —for Post Office—Direct.*

4666

Q. What have you to say about this matter of sex education? A. I think it has a great tendency to discourage the efforts being made by decent agencies to build up fine ideas of these subjects.

Q. As to the tendency of literature of this type and sophisticated items, is there any great authority who has made a study of it whose word or estimate or appraisal you could quote? A. I think there has been a tendency—

Mr. Bromley: Just a minute. I object to that question as incompetent and immaterial.

4667

Mr. O'Brien: I think a witness, particularly of this category, has a right to quote an authority in support of his own views.

Chairman Myers: Oh, let him answer the question.

The Witness: I think people are disturbed about the increase in this particular kind of literature and the increase in what might be called its apparent respectability, and I have in mind the statement of John Buchan, Lord Tweedsmuir, who spoke of the people who are contributing to this kind of literature as vicious children who are trying to pick the mortar out of the foundation of society.

4668

I think that is a good definition of the kind of thing attributed to this type of magazine. The efforts being made by the decent and constructive element in society are being negated by this kind of alleged literature.

*By Mr. O'Brien:*

Q. In order to make the record specific in this matter I want to ask you if those are the magazines or similar magazines and these are the lists of items which were exhibited

*John Keating Cartwright—for Post Office—Cross.*

to you for your examination (indicating magazines), and just to make it clear what we are talking about here, I show them to you. A. Yes, they are; from January to November, 1943.

4669

Mr. O'Brien: And these are the same items, so this will be clear for the record, that are specified in the proceeding and which have already been discussed by numerous other witnesses.

Your witness.

*Cross Examination by Mr. Bromley:*

4670

Q. Were you aware, Father Cartwright, that the Catholic Digest frequently reprints matter from this magazine? A. No, I am not.

Q. You never knew it? A. No.

Q. What is the Catholic Digest? A. The Catholic Digest is a monthly magazine which appears—which brings in—it is in analogy with the Readers Digest except that it reprints or brings in matters supposedly of Catholic interest.

Q. You think the Catholic Digest would reprint articles from a magazine, the general tendency of which was indecent? A. I think if it did it used very bad judgment.

Q. But, you didn't know that before? A. No.

4671

Q. Do you know Father Flannagan? A. Yes.

Q. You wouldn't call Father Flannagan one of these vicious children that you referred to? A. No.

Q. Would you? A. Oh, no.

Q. Did you know that he was a contributor to Esquire? A. Again, I wouldn't agree with his judgment if he was.

Q. Did you know he was? A. No, I didn't know it.

Q. Now—

*John Keating Cartwright—for Post Office—Cross.*

4672

Mr. O'Brien: Let us get this clear. Is the witness being asked on the stand if Father Flannagan contributed any of these articles to which I assume his testimony refers, or some other articles of some other kind unrelated to sex?

The Witness: I would like to say, of course, from this particular survey of these magazines, there is evidently a great deal of other material in them.

*By Mr. Bromley:*

4673

Q. And some of it is very fine material, would you say, Father? A. I wouldn't call any of it fine material.

Q. Did you read everything in the January issue? A. No.

Q. You didn't? A. No.

Q. Yet you sit here and utter an opinion about the January issue as a whole, do you? A. No. I think the general tendency of the magazine is clear from an examination of eight or nine copies of it.

Q. Well, how much of an examination did you make? A. Well, I made a thorough examination of it the other day.

Q. You did? A. Yes.

Q. How long did it take you? A. Oh, possibly an hour.

4674

Q. For the whole eleven issues? A. Yes. You don't need to read it all. It wouldn't take you an hour to take twenty copies of the Atlantic Monthly to see what its general character would be.

Q. You only took sixty minutes on these eleven issues? A. I thought that was an ample time to form an opinion on it.

Q. Then, Father, you only took sixty minutes on it? A. Yes.

Q. That is all? A. No, I wouldn't say that is all. That



*John Keating Cartwright—for Post Office—Cross.*

is all I took on these particular magazines. I have seen this thing before; it is on display in lots of waiting rooms.

4675

Q. I am talking about the eleven issues. A. Yes.

Q. Did you read any of the nine articles in the January issue? A. I don't remember. I remember a good part of one article in the May issue, I think it was in the May issue, by Gallico.

Q. The burlesque article? A. Yes.

Q. Did you read any of the seven pieces of fiction in the January issue? A. No, I don't think so.

Q. Is it true that the only article that you read out of the eleven issues was the Gallico article on burlesque? A. No, I looked over the others.

4676

Q. I want to know how many you read in their entirety. A. I didn't read any in its entirety.

Q. Is your opinion, Father, of a magazine like *Life* the same as you have here expressed about *Esquire*? A. I didn't come prepared to testify on other magazines, sir.

Q. Are you familiar with *Life*, Father? A. I see it from time to time, yes.

Q. It is a fact, isn't it, that your opinion about *Life* is the same as you have here expressed about *Esquire*? A. I don't know as I care to go into it.

Q. I don't know if I asked you to. A. I came prepared to—

4677

Mr. O'Brien: I object to this line of cross examination. It seems to have nothing to do with *Esquire*, what similarity is there?

Mr. Bromley: It seems to me it bears on the issue directly.

Mr. O'Brien: *Life* does not print fiction and articles; it doesn't print any such articles like that found

*John Keating Cartwright—for Post Office—Cross.*

4678

here. It doesn't resemble Esquire except it is printed on paper and has pictures.

Mr. Bromley: It is material.

Chairman Myers: It is part of cross examination.

Mr. O'Brien: Cross examination, I assume, within some limit, decent limitation.

Mr. Bromley: I certainly did not mean to be indecent.

*By Mr. Bromley:*

4679

Q. Would you mind telling us, Father, if your opinion of Life is substantially the same? A. Not substantially the same, no. I think that Life makes many errors in the kind of material it presents. I don't think its main tendency is the same as this.

Q. But it has some tendency? A. It has a tendency in that direction.

Q. What would you say about the New Yorker magazine? A. I think something more or less along the same line I said about Life.

Q. You deplore that tendency, don't you? A. I deplore that tendency, yes.

4680

Q. You think it is bad for the people as a whole? A. I think it is bad, yes.

Q. Are you familiar with what we have referred to here as the N. O. D. L. list? A. The N. O. D. L. list?

Q. Yes. A. No.

Q. You don't know anything about them? A. What does that mean?

Mr. Harding: The National Order of Decent Literature.

*John Keating Cartwright—for Post Office—Cross.*

The Witness: The National Order of Decent Literature, no; I am not familiar with them.

4681

*By Mr. Bromley:*

Q. Did you ever hear of a publication called the Acolyte?

A. Yes.

Q. Where does that originate? A. What?

Q. Where does that originate? A. It is one of our Catholic papers, I forget where it is printed; I think in the Middle West.

Q. Don't you know that that regularly publishes the Code for Clean Living, a list of books which are prescribed to be read in the main? A. I am not familiar with the paper. I don't see it very often. I know that it exists.

4682

Q. You have seen it, Father? A. Yes.

Q. I show you Respondent's Exhibit 17-A, which purports to be the Acolyte for January, 1943, and ask you whether you do not recognize that? A. What about it, sir?

Q. Have you read the code? A. Yes, I just looked it over.

Q. Do you agree with it? A. No. It says—I think it is carelessly worded. It says, "All periodicals are listed which glorify or condone reprehensible characters or reprehensible acts."

I doubt if all periodicals are listed. I think he might say that all the periodicals listed glorify or condone, but I don't think he should say "All periodicals are listed which glorify or condone."

4683

Q. That list that you have before you, Father, is the list of magazines disapproved by the National Organization for Decent Literature, isn't it? A. I don't know anything about this organization except what you have just told me.

Q. Look at Respondent's Exhibit 17-B for identification.

*John Keating Cartwright—for Post Office—Cross.*

4684

Do you see that is entitled "Magazines disapproved by the National Organization for Decent Literature"? A. I see that.

Q. Do you know Bishop Noll of Fort Wayne, Indiana? A. Yes.

Q. Do you know his connection with the National Organization for Decent Literature? A. I have not heard of the National Organization for Decent Literature very much. Under that title it doesn't come back to me.

4685

Q. Do you know his connection with the Acolyte? A. He is connected more with the Sunday Visitor. I didn't know he was directly connected with the Acolyte. However, he may be. I am not very familiar with the Acolyte.

Q. You didn't know that the National Organization for Decent Literature had an office here in Washington? A. No.

Q. Have you ever been in the National Catholic Welfare office? A. Oh, yes.

Q. You have never seen the N. O. D. L. office? A. No.

Q. And don't know anybody connected with it? A. No. May I say I noticed among other things it says that "This list is neither complete nor permanent."

4686

Q. That is true. They publish a list every month. We have all the lists here for 1943. Would it surprise you to know that Esquire was never on such a list? A. It doesn't surprise me a bit.

Q. Now, you are familiar with Our Sunday Visitor, aren't you? A. Yes, sir.

Mr. O'Brien: Just a minute. There is no such testimony in this case and I don't think any such testimony is proper in this record, that Esquire was never on the N. O. D. L. list.

Chairman Myers: This testimony, as I get the fact,

*John Keating Cartwright—for Post Office—Cross.*

is that the witness has testified as an expert and he is asking a question on his opinion.

4687

Mr. O'Brien: But to ask a question not based on testimony already in the record is meaningless and improper.

Chairman Myers: He is asking about exhibits in the record.

Mr. O'Brien: He said, "Would it surprise you to know that the Esquire was never on the N. O. D. L. list?" There is no such testimony in this record. The question could not be based on any evidence.

Chairman Myers: It goes to the opinion of the witness: Overruled.

4688

Mr. O'Brien: It can't go to the opinion of the witness, Mr. Chairman, when there is no fact upon which to base it.

Chairman Myers: The objection is overruled.

Mr. O'Brien: Exception.

Chairman Myers: You may have it.

*By Mr. Bromley:*

Q. This paper, the Sunday Visitor, published in Huntington, Indiana, is a reputable Catholic paper, is it not? A. Most certainly.

4689

Q. And the director is the Reverend John Francis Noll, to whom I have referred? A. Yes, sir.

Q. And John Francis Noll is a bishop, isn't he? A. Yes, sir.

Q. Would you agree with the statement in this paper for November 7, 1943, as follows: "Those psychiatrists who are followers of the late Sigmund Freud glorify rather than denounce shamefulfulness. They believe in feeding the mind on

*John Keating Cartwright—for Post Office—Cross.*

4690 sex and directing the reader not away from sex but toward it."

Mr. O'Brien: I object to that question. It has no relation to the direct examination. We didn't bring in psychiatrists in any way. It is totally improper.

Chairman Myers: The objection is overruled.

Mr. Bromley: Do you carry the question in your mind?

The Witness: Will you read the statement again, please?

4691 *By Mr. Bromley:*

Q. Do you agree with the statement:

"Those psychiatrists who are followers of the late Sigmund Freud glorify rather than denounce shamefulness. They believe in feeding the mind on sex and directing the reader not away from sex but toward it." A. I think a great many of them do.

Q. Well, that is a characteristic of the Freudian school of thought, isn't it?

4692 Mr. O'Brien: I again object. Why is this witness being asked about the Freudian school of psychiatry? Nobody has appeared here who is a member of the school.

Chairman Myers: I don't see your point.

Mr. O'Brien: Why is he asked about the Freudian school of psychiatry any more than about those doctors?

Chairman Myers: The witness is an expert witness, he has qualified as such, and has given reasons—



*John Keating Cartwright—for Post Office—Cross.*

Mr. O'Brien: Not on psychiatry.

4693

Chairman Myers: As I understand it, this is directed to test those reasons. This is directed to a piece in the exhibits. It is directed to the opinion of the witness. Hasn't the cross-examining attorney the right to find out what the opinion is based on?

Mr. O'Brien: This is not the proper way to do it.

Chairman Myers: I can't tell the attorney how to do it. The objection is overruled.

Mr. O'Brien: I think it is a scandalous procedure.

Mr. Bromley: Will you read the question, please?

(Pending question read, as above recorded.)

4694

Chairman Myers: If he knows. If he doesn't know, he can say so.

The Witness: I would think that a great many of the followers of Freud—I can't say for all of them—attempt to glorify sex unduly—sex understood in this particular sense—and they are not aware of the dangers implicit in it. I can't answer for the whole school.

Freud is represented not only by competent psychiatrists, but by literary people who are attracted by his theories because they are a little more sensational.

4695

*By Mr. Bromley:*

Q. Most followers of Freud agree with him that sex is to be found in everything?

Mr. O'Brien: There is no basis for any such question, if Your Honor please.

*John Keating Cartwright—for Post Office—Cross.*

4696

Chairman Myers: I got the impression that the witness stated as one of his qualifications that he had studied psychiatry.

Mr. O'Brien: As a part of philosophy, but he didn't say anything about psychiatry.

Chairman Myers: There is a question as to whether Freudian theories are psychiatric or psychological. The objection is overruled.

Mr. O'Brien: There has been no statistical study testified to about most followers of Freud. There is no basis for asking Father Cartwright what they think.

4697

Chairman Myers: The witness can say he doesn't know if he doesn't know.

Mr. Bromley: Will you read the question?

(Question read as above recorded.)

The Witness: I don't like the word "most" because I cannot say that I have read most of the followers of Freud. I think a great many do.

Mr. Bromley: That is all. Thank you, sir.

Mr. O'Brien: That is all, Father Cartwright.

(Witness excused.)

4698

Mr. O'Brien: May we have a short recess?

Chairman Myers: We will recess for ten minutes.

(At this point a short recess was taken, after which the hearing was resumed, as follows):

Chairman Myers: Come to order, gentlemen.

*Peter Marshall—for Post Office—Direct.*

PETER MARSHALL, called as a witness by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

4699

*Direct Examination by Mr. O'Brien:*

Q. State your full name for the record, please, sir. A. Peter Marshall.

Q. And where do you live? A. 3100 Cathedral Avenue.

Q. What is your profession? A. I am a minister of the New York Avenue Presbyterian Church.

Q. And would you state to the Board, Dr. Marshall, where you were educated and what degrees you received? A. The first part of my education I received in Scotland, studying engineering at a technical college, coming to this country 16 years ago, education in Columbia Theological Seminary in Atlanta, Georgia, and I have been in Washington six years.

4700

Q. You have a degree in divinity? A. Bachelor of Divinity, from Columbia Theological Seminary.

Q. Dr. Marshall, as pastor of this church in Washington—which I understand is the church that used to be attended by Abraham Lincoln, an old, well-established church—is that right? A. That is correct.

Q. Do you come in contact with members of the congregation, the young people especially? A. I do.

4701

Q. Have you any special work with the young people? If so, will you tell us what it is? A. I have been interested in and particularly active in young people's work all-through my ministry; young people's summer conferences and retreats, and I have been on many campuses in colleges conducting services in connection with religious emphasis weeks, and so on.

I should say that the majority of my ministry, or most of my ministry, has been with young people.

*Peter Marshall—for Post Office—Direct.*

4702

Q. Before you became a minister of the Gospel, Dr. Marshall, when you first came to the United States, did you have an opportunity in your occupation at that time to circulate among men and to learn from personal conversation and contact how they think and react to various things? A. Well, I had been for six years employed in machine shops, in iron and machine manufacturing plants in Scotland; coming to this country, I had a year with some of the largest newspapers in the South. I have dug ditches in New Jersey.

4703

Q. Now, Dr. Marshall, at my request did you examine several issues of the magazine known as Esquire? A. I did.

Q. Which I showed you? A. Yes.

Q. Each one of which bears a list of the various items to which your attention was called, by page number and description; and did I ask you if you would study and examine these magazines and form an opinion? A. You did.

Q. Upon them? A. You did.

Q. You did that, did you not, Doctor? A. I did.

4704

Q. I would like to ask you, Doctor, if you will state for the Board's information what is your opinion as to whether the items in Esquire are of a decent or indecent character? A. It is my opinion that the articles and pictures to which my attention was drawn are definitely indecent.

Q. Do you think they would have any effect upon the morals of readers addicted to reading this type of literature?

A. It is my opinion they would.

Q. What effect? A. An effect calculated to lower moral tone and to degrade.

Q. Did you notice some items which you mentioned with respect to satires or jokes upon virginity or marital fidelity?

A. I did. I did in particular notice these and formed the impression that the tendency of such jokes, articles, and

*Peter Marshall—for Post Office—Cross.*

pictures is to circulate the impression that virginity and chastity is a thing to be joked about and that its absence is prevalent and widespread, and would tend to suggest to the reader of the magazine that it is now not only smart and sophisticated but it is commonplace.

Q. Would you consider, Dr. Marshall, that the contents of these magazines to which your attention has been called are information of a public character proper for dissemination to the public? A. I can't see how such information can add anything to public enlightenment or can make any contribution to public morals.

Mr. O'Brien: That is all.

*Cross Examination by Mr. Bromley:*

Q. When did you first see the eleven issues? A. These particular issues in question I think were examined by me—I don't remember exactly when—last week, I think.

Q. How long a time did you spend looking at them? A. I imagine I spent an hour or more.

Q. Was that the extent of the examination which you accorded them? A. This particular collection, yes. I am not a regular reader of Esquire but I have perused several issues of it over a period of years.

Q. I was concerned with those eleven issues. Your examination of them was limited to about an hour, was it?

A. More or less. I didn't time my arrival and my departure.

Q. I want your best estimate. A. I should say about an hour or an hour and ten minutes, probably.

Q. You think the tendency of jokes ridiculing virginity and chastity—

*Peter Marshall—for Post Office—Cross.*

4708

Mr. Cargill: Will you speak loud enough so we can hear you?

Mr. Bromley: Withdrawn.

Q. You deplore jokes ridiculing chastity wherever found don't you? A. I certainly do.

Q. You would deplore them even if they were in the Ladies Home Journal, wouldn't you? A. Certainly.

4709

Q. Would you explain to me, please, just what it is that you find in the cartoon in the August, 1943, issue on page 90, in the upper left-hand corner, which you say is calculated to lower the moral tone and degrade? A. You are referring to this one here (indicating)?

Q. Yes, sir. A. Well, to me the suggestion of that particular drawing is calculated to suggest that a wedding and the resultant honeymoon is definitely sexual.

Q. Well, isn't a wedding definitely sexual? A. Not necessarily.

Q. It is not? See if I understand you. You say the girl in the wedding dress, working at the lathe, with the caption, "She came directly from the wedding—Boy! That's patriotism", suggests that the wedding is definitely sexual. Is that what you said? A. No, it is not what I said.

4710

Q. Say it again, please. A. The suggestion which to me this picture is to convey, is to connect the wedding and the aftermath of the wedding with sacrifice in the name of patriotism, which I think is a cheapening of that noble virtue, patriotism.

Q. Oh, your criticism of the cartoon is that it cheapens patriotism? A. That is a part of it, yes.

Q. What is the other part? A. As I stated before, the connection of the wedding and the honeymoon.

Q. Do you mean to say that it is indecent ever to mention a wedding and a honeymoon? A. No, I certainly do not.



*Peter Marshall—for Post Office—Cross.*

Q. Well, how does it become indecent to mention it here?

4711

A. Appearing in *Esquire*, the suggestion would be indecent.

Q. Well, then, your position is that everything in *Esquire* is indecent. Is that it? A. No, it is not.

Q. Do you really mean that this cartoon is indecent, or don't you mean that it cheapens patriotism? A. I mean both.

Q. It is indecent because it cheapens patriotism? A. No, that's not what I mean. It cheapens patriotism.

Q. Yes. A. It is indecent because of the suggestion which, in my opinion, it conveys.

Q. And that suggestion is that there is going to be something touching upon sex on the honeymoon? A. Yes.

4712

Q. Am I correct, then, in assuming that you only looked at the material to which your attention was directed by Mr. O'Brien? A. No, sir.

Q. What else did you look at in the January issue? A. I examined these magazines, looking at the content as a whole, particularly the items to which attention was directed on these notations on the cover.

Q. Did you look at the Varga girls? A. Yes, sir.

Q. You did not find anything objectionable in them? A. Yes, sir; I did.

Q. You thought they were a matter of bad taste? A. Very definitely.

4713

Q. Did you read Mr. Nathan's theatrical column in which he objected to some 35 or 50 things current on the stage? A. Is that part of the items referred to?

Q. You cannot remember? A. No, I do not.

Q. Did you read "The Savage Beast In Us?"

Mr. O'Brien: Might I suggest that it is very difficult for a witness to recall these things by title.

*Peter Marshall—for Post Office—Cross.*

4714 I think that these should be exhibited to the witness.  
Chairman Myers: He is asking whether he read them.

Mr. O'Brien: I think he is testing his memory as to names.

Chairman Myers: He has a right to do that on cross examination.

Mr. O'Brien: It is very difficult to ask a man if he remembers a name.

Chairman Myers: Not when it is related to the subject at hand as it is here.

4715 The Witness: I do not remember—

Mr. O'Brien: Well, there are so many items here to be remembered.

*By Mr. Bromley:*

Q. What did you think was wrong with "Benedicts, Awake!"? A. That one I do remember. The whole tone and tenor of the article in question, which I think was in the form of a poem, was that marriage is simply a matter of indulgence in sexual license and liberty, and that marriage exists only for the gratification of the sexual desire.

4716 Q. That is your recollection of what the poem was about, is it? A. Yes.

Mr. O'Brien: Now, Mr. Chairman, I think the witness if he desires to examine or refresh his recollection on any item concerning which he is cross examined, he has a right to look at it.

Chairman Myers: That is correct, he has, and if the witness wants to look at any one of these articles he has a right to ask for it.

The Witness: May I see it?

*Peter Marshall—for Post Office—Cross.*

Chairman Myers: He has a right to.

Mr. Bromley: Of course he has. I am trying to find it.

4717

*By Mr. Bromley:*

Q. There it is, in the January issue (handing above-mentioned magazine to the witness). A. (The witness read the matter in question.)

Q. You are still of the same opinion? A. I am.

Q. Now, sir, will you look at this cartoon at the right hand bottom of page 37 of the October issue and tell me just what it is you find in it which you say is calculated to lower the moral tone and degrade? A. I would suppose the tattooing on the man's arm is moved by the flexing of his muscles. That would be the idea conveyed to me by that particular drawing, and that would suggest the sensuous dances that are performed to stimulate and excite passions of men.

4718

Q. So that based on that inference it is your opinion that that drawing is indecent. Is that right? A. Well, I wouldn't find that particularly objectionable. There are more in the magazine that are more directly to the point than that one.

Q. Isn't the worst that you can say about this is that it is a matter of bad taste? A. It is definitely a matter of bad taste.

4719

Q. Isn't that all? A. No, I think probably it is—

Q. Vulgar? A. Suggestive.

Mr. O'Brien: If the Board please, the expression "bad taste" is being used, and it is very unclear to me whether the witness and the counsel are referring

*reter Marshall—for Post Office—Cross.*

4720

to the same thing, whether the witness is referring to bad taste in a moral sense and the other in some other sense. I think it should be clear.

Mr. Bromley: Well, have you tipped him off enough now?

Mr. O'Brien: If I need to tip Dr. Marshall off I am badly mistaken, because he has more intelligence than the whole bunch of lawyers in the room here, including Mr. Bromley.

*By Mr. Bromley:*

4721

Q. Are you familiar, Doctor, with the sports sections of these eleven issues of Esquire? A. I have seen and read several of the sports articles.

Q. What is your opinion of them? A. I think they are good.

Q. Are you familiar with the art content of these eleven issues? A. I am not an art critic.

Q. Are you familiar with the art content of these eleven issues? A. No, I don't think I could claim to be familiar with the art content.

4722

Q. Have you made a study of the fiction in these eleven issues of Esquire? A. I don't think it could be called a study.

Q. What is your opinion, based upon what you did do, with respect to the fiction in the eleven issues?

Mr. O'Brien: Mr. Chairman, he hasn't let the witness answer the question.

*By Mr. Bromley:*

Q. Go ahead and answer. A. Repeat the question, please.

*Peter Marshall—for Post Office—Cross.*

Q. Did you read the fiction in the eleven issues? A. I did not read all of the fiction in the eleven issues.

4723

Q. Did you read it enough so that you are able to express an opinion with respect to it? A. I gathered an impression from a perusal of the issues presented to me.

Q. I am talking about the fiction. A. Yes.

Q. Did you gather an impression about the quality of the fiction? A. I did.

Q. What was that? A. If I may put it this way: My impression of the policy, editorial policy and tone of the magazine, is that it tends to make that which is immoral modern, sophisticated, and commonplace, to suggest that fornication and adultery, pre-marital relations, extra-marital relations, are the conventional conduct of the American people to which I, as a minister, must protest, knowing it to be not so and believing it to be definitely injurious to public morals, and particularly to the readers of this magazine.

4724

Q. Now, would you point out to me the piece of fiction which has any such tendency as that? A. That, sir, would take too long and it would require me to mark, I believe, every issue of the magazine to do so.

Q. Could you call our attention to one piece of fiction which has that tendency? A. If given time; yes, I could.

Q. Would you do so?

4725

Chairman Myers: Have you all the issues there?

Mr. Bromley: Yes, I will give them all to him.

Mr. O'Brien: I suggest, Mr. Chairman, if Dr. Marshall is going to do that, he will have to be given a recess so he won't be hurried.

Mr. Bromley: No, I want to keep you two apart.

Mr. O'Brien: He doesn't need to have any assis-

*Peter Marshall—for Post Office—Cross.*

4726

tance whatever, as I told you before. Counsel very well understands how difficult it is under pressure to select items out of dozens that are before him on the table, and also any references in the record which in any wise color the testimony of this respectable witness and the dirty use of it should be stricken from the record.

The Witness: Here it is.

*By Mr. Bromley:*

4727

Q. All right, sir; go ahead. A. I would like particularly to mention from page 134 of the June issue, the article headed: "Libel suits were as wine to that hell-firin' editor of the old West, Dave Day," and this particular reference:

"Here lies the body of poor old Charlotte.

Born a virgin, died a harlot.

For eighteen years she kept her virginity,

An all-time record in this vicinity."

4728

That, it seems to me, expresses the very thing that I find most objectionable in the editorial tone and policy of the magazine, a suggestion that there is anything unusual in virginity until eighteen years of age.

Q. Had you ever heard that verse before, Doctor? A. No.

Q. You never had? A. No.

Q. In the first place, you notice that is not a piece of fiction, don't you? A. That is true.

Q. It is a factual report of what a rough-and-ready Western editor published in his newspaper years ago, isn't it? A. I don't see why that excuses it or any other magazine from reprinting it.



*Peter Marshall—for Post Office—Cross.*

Q. You don't think that the fact that it is a factual report creates a distinction and serves as no justification? A. In the first place I don't know it to be a factual report.

4729

Q. We have had testimony that it was. A. I know nothing about that.

Q. If it were a piece of factual reporting and if those things had been published by Dave Day in his Western newspaper, would your opinion be the same? A. It would.

Mr. O'Brien: I object to the question. It is too indefinite and misleading. This word "factual report" does not refer to the fact that this jingle was published or the fact that virginity was so scarce in the district.

4730

Chairman Myers: Well, if questions of a similar character had been ruled out when asked by the other side this trial would have been over long ago.

Objection overruled.

Mr. O'Brien: I think it is fair to the witness to specify in any question what you are talking about or how could the witness answer intelligently?

Chairman Myers: Read the question to him, Mr. Reporter.

(Question read.)

4731

The Witness: You wish me to answer that?

*By Mr. Bromley:*

Q. Please. A. It would still be the same.

Q. In other words, you object to factual reporting? A. That is not the correct inference. I am objecting to its appearance in Esquire magazine.

*Peter Marshall—for Post Office—Cross.*

4732

Q. You would object to its appearance in any magazine?

A. I certainly would.

Q. Then you do object, Doctor, to factual reporting of sordid conditions?

Mr. O'Brien: I object to that question. It is unfair and not based upon anything in this record or anything heretofore asked between the witness and counsel.

Chairman Myers: Overruled.

4733

The Witness: I am objecting to the appearance of such items as the one I have just read, as tending to suggest that virginity at the age of eighteen is rare.

*By Mr. Bromley:*

Q. Wouldn't you answer my question as to whether or not you object to factual reporting of sordid conditions?

Mr. O'Brien: I ask that the question be amended to specify what conditions and when and how that they ought to be reported.

4734

Chairman Myers: He is asking the questions. Now, neither counsel on the other side nor myself can frame them for him.

Mr. O'Brien: But I have a right—

Chairman Myers: You have no right to put the question in his mouth and ask a question in words and figures like this. The cross examiner frames his own questions.

Mr. O'Brien: I understand that, but I also think I have a right to request that the questions be

*Peter Marshall—for Post Office—Cross.*

fairly specific and not unintelligible, misleading, or entrapment questions.

4735

Chairman Myers: The objection is overruled.

Read the question, please.

(Question read.)

The Witness: I feel very definitely that we have far too much that is sordid, even if it be factually correct and accurate.

*By Mr. Bromley:*

4736

Q. You would, therefore, think, sir, that the newspaper reportings of the Errol Flynn seduction case were degrading and intended to lower our moral tone, would you? A. I would.

Q. You would also think that the newspaper reporting of the Chaplin paternity case was degrading to our civilization and definitely lowered our moral tone, wouldn't you? A. I would.

Q. You would think that the wide-spread newspaper reporting of the Dempsey divorce matters and the counter-charges and charges of adultery and misconduct which appeared in our papers for so many weeks, lowered our moral tone and was definitely degrading, wouldn't you? A. I think a distinction has to be made between a factual reporting of an event and the way in which it is reported. A distinction must be made.

4737

Q. Don't you think that over the period of time that you have been in this country, sir, there has been a great change in the amount of frankness and forthrightness with which matters of that kind are now reported in the press? A. Yes, I believe our moral tone has been definitely lowered.

*Peter Marshall—for Post Office—Cross.*

4738 Q. And there is a great deal more frankness and forthrightness now than when you first came here, isn't there?

A. Yes, I believe there is.

Q. Do you know the Reverend Fred B. Luchs, Ohio University in Athens, Ohio? A. I do.

Q. In your opinion, is he a clergyman of good reputation? A. He is.

Q. He has spoken in your church, hasn't he? A. Yes.

Q. He has had considerable contact with youth in his work, hasn't he? A. I believe so.

4739 Q. Wouldn't you respect his opinion, Doctor, as to what might or might not corrupt the morals of youth? A. Yes. I would respect his opinion. I might not agree with it.

Q. Wouldn't you feel his opinion is entitled to respect and consideration by the Board?

Mr. O'Brien: I think until the opinion is spoken or shown to the witness that is improper.

Chairman Myers: Objection sustained.

*By Mr. Bromley:*

Q. Do you know Dr. William Jacobs, President of Williams College? A. Yes.

4740 Q. Is he a man of good reputation? A. Yes.

Q. He conferred an honorary degree on you, didn't he? A. He did.

Q. Would you say his opinion with respect to Esquire is entitled to respect and consideration by the Board? A. I know what his opinion is.

Q. You know what his opinion is? A. Yes.

Q. Do you know that he testified here and gave his opinion? A. He testified as to the sport articles.

*Peter Marshall—for Post Office—Cross.*

Q. Did you tell him that in your opinion there was nothing indecent about the Varga girls? A. I did not.

4741

Q. The opinions you are expressing here are your own personal opinions, aren't they? A. Yes.

Q. Would you agree that in expressing an opinion about Esquire, a fair barometer might be found in the character of its contributors? A. I don't know the character of its contributors.

Q. Well, if its contributors were respectable people—regular contributors were respectable people—wouldn't that be some indication which the reputation was accorded generally? A. I don't know.

4742

Q. Did you ever hear of William Lyon Phelps? A. Yes.

Q. You know about him? A. Yes.

Q. You know he was a department head of the magazine? A. No, I didn't know that.

Q. Do you really mean that? A. Yes.

Q. You didn't know it. You don't think that William Lyon Phelps would regularly act as a department head of an immoral or objectionable magazine? A. I am very surprised to learn that he was a department head.

Q. I thought you looked at the magazine before the eleven issues. A. I had.

Q. I thought you had looked at the eleven issues. A. I had.

4743

Q. Did it escape your attention, Doctor, that William Lyon Phelps was a contributor in ten of the eleven issues which you examined? A. Yes; it did.

Q. How is it possible for you, sir, to come here and express an opinion and overlook so important a fact as that? A. I don't regard that as an important fact.

Q. Did you ever hear of William B. Ziff? A. No.

Q. You never heard of him? A. No.

*Peter Marshall—for Post Office—Cross.*

4744

Q. Did you ever hear of Manuel Komroff? A. Never heard of him.

Q. Did you ever hear of Louis Paul? A. I never heard of him.

Q. Did you ever hear of George Jean Nathan? A. Yes, I did.

Q. Would you say his was the best reputation among theatrical critics in this country? A. I know he enjoys the reputation among them.

4745

Q. Did it escape your attention that he was a contributor to each one of these eleven issues? A. No. I had noticed his contributions in some of them. I didn't count how many he contributed to.

Q. Do you know Father Flannagan of Boys' Town fame? A. I know of him, yes.

Q. Would you say that Father Flannagan would contribute to a magazine of questionable character? A. It all depends on what contribution may have been asked of him. I don't know what contribution he made, but knowing Father Flannagan, I have no doubt as to the quality and the tone of the contribution he did make.

4746

Q. Then, if you had looked a little more closely you might have found a lot of fine material in these magazines, might you not? A. If I had looked closer I might have discovered a lot of things I didn't discover.

Q. Do you know Charles Carroll Smythe? A. I do not.

Q. Are you familiar with the fact that he wrote an article for Esquire entitled "Father of the C. Y. O."? A. No, I am not.

Q. Do you know what the C. Y. O. is? A. I do not.

Q. Did you know it was the Catholic Youth Organization? A. I did not.

Q. Are you familiar with the fact that the Catholic Digest



*Peter Marshall—for Post Office—Cross.*

has on a number of occasions reprinted articles from Esquire? A. I am not aware of that. 474

Q. Did you ever look at the Catholic Digest? A. No.

Q. Would agree with me, Doctor, that our present day customs sanction a frank discussion in print of such matters as venereal diseases? A. I believe that particular subject has come in for frank discussion, and I believe it ought.

Q. You don't find that objectionable? A. It depends who does it and how it is done.

Q. And suppose it were done in Esquire, would you find that objectionable? A. I might. 4748

Q. You might? A. Yes.

Q. Suppose it were done in Harpers? A. It might be objectionable, it would depend on how it was done.

Q. You did not mean to indicate that it might be objectionable depending on the magazine, but rather on the type of discussion of it? A. Yes, that is what I meant.

Q. Did you read the article in Esquire called "The Court of Lost Ladies"? A. I don't recall it by title. If I could see it I might remember whether I read it or not.

Q. It was about a typical night in a New York night court.

Chairman Myers: Let him see the article. 4749

*By Mr. Bromley:*

Q. Do you remember it now? A. Not yet.

Q. Not yet? A. No.

Q. (Handing document to witness.) A. I did not read this article.

Q. Did you read "Portrait Above the Fire Place"? A. Once again, I don't remember it by title.

*Peter Marshall—for Post Office—Cross.*

4750 Q. (Handing above-mentioned article to the witness.) A. No, I do not remember this article.

Q. Did you read "The Fall of the Flattering Word"? A. I suggest, sir, that you are more familiar with those titles than I and I can't answer categorically whether I read any single title or not. My examination was rather cursory and with a dozen or eleven or twelve issues to look over (I did not summarize the titles, nor did I read them all.

Chairman Myers: Why not let him see it so he can know what you are talking about.

4751 *By Mr. Bromley:*

Q. Here it is in the March issue (handing above-mentioned article to the witness).

Mr. O'Brien: That is "The Fall of the Flattering Word". I thought it was something else.

The Witness: No, I did not read all of this article. I may have glanced at it. I may have read passages marked, but all the article I did not read.

*By Mr. Bromley:*

4752 Q. Did you read "Wise Men Pick Pyknic Girls"? A. May I suggest that time would be saved if I stated that all the articles to which attention is directed were not read fully by me.

Q. Was any one of them read fully by you? A. I could not remember whether I read all of any one or not.

Q. You really can't, Doctor? A. No, I really can't.

*Peter Marshall—for Post Office—Cross.*

Mr. O'Brien: I don't think that it is necessary for counsel to roar at the witness since he is standing beside him?

4753

*By Mr. Bromley:*

Q. Is there any way that you could refresh your recollection as to whether you read all of any article in this magazine? A. No, I don't think that I read all of any article.

Q. Who told you to read what you did read? A. These pages in the front of each issue indicated the articles or pictures in question, and following the directions printed here I looked at as many as I could.

4754

Q. As many as you could? A. Yes.

Q. Now, did you notice on this last one on which you just put your finger, the issue for October, that the type-written reference has page 38 marked, an article entitled "Wise Men Pick Pyknic Girls"? A. Yes, I noticed that.

Q. And it still didn't occur to you that you should read that article? A. Well, I didn't have time in the first place.

Q. As a matter of fact, sir, you deplore the trend of modern times as detrimental to the morals of our Nation, don't you, just generally? A. Yes.

Q. And indeed, you have publicly advocated that women should return to the old standards of purity and decency of the year 1900, haven't you? A. When did I do that?

4755

Q. You don't remember? A. I have publicly advocated that women should return to what?

Q. To the standards of purity and decency of the year 1900? A. Did I specify the year I don't think I specified that year, no.

Q. Well, did you say anything like that? A. I don't think I did.

*Peter Marshall—for Post Office—Cross.*

4756

Q. Is that what you believe? A. I don't know what the moral standards were of the year 1900. I wasn't born then. I don't know what they were.

Q. You oppose and publicly oppose—and I mean no criticism, sir—the custom and habit of drinking and smoking by women, don't you? A. I do.

Q. You think that drinking and smoking by women evidences a decline in civilization, don't you? A. In the first place, I don't see what this has to do with my testimony with regard to Esquire magazine.

4757

Q. I ask that you excuse me, but I think it has something to do with it. Now, would you mind answering the question? A. I believe that womanhood has definitely been lowered by the achievement of equality with men. I believe that for nineteen centuries, ever since the Annunciation came to a woman named Mary, who held in her arms the Lord Jesus, for nineteen centuries womanhood was respected and ennobled and was on a plane higher than that on which we mere men lived.

She was recognized as being en rapport with the angels and closer to God, made of finer clay. For nineteen centuries she had been not equal but superior.

4758

In order to achieve equality she had to step down from that high plane on which she had been regarded and on which she had been living. The only things that men had which she had not were vices, and these she appropriated in the name of equality and broad-mindedness and liberty, and I can't see that stepping down from a pedestal could mark progress at all.

We don't make progress in a downward direction, and anything which cheapens or degrades womanhood could certainly not be called progress.

Does that answer your question?

*Peter Marshall—for Post Office—Cross.*

Q. You don't like, therefore, such things as the modern woman's bathing suit, do you? A. I don't think that has anything to do with the matter at hand.

4759

Q. Don't you think that is degrading to woman? A. I think some of the bathing suits are indecent, yes.

Q. To put it generally, sir, you deplore what you call the smug sophistication which exists today, don't you? A. Yes, I do, and particularly do I deplore it in this particular magazine because, as I said, of its tendency to suggest that promiscuity, immorality, adultery, have become almost mores, and that chastity and virginity are objects for satire and ridicule, and the whole tendency of the magazine, it seems to me, is to degrade and definitely to lower that moral tone.

4760

I feel very definitely, as a clergyman, that there are certain things before God that are either good or bad, there are certain things that are evil, and I see no reason why, as a Christian clergyman, I cannot say that I regard such things in this magazine as evil. Nothing can make them good.

Q. How many pages out of the eleven issues would you say you read? A. I don't regard that as a proper question because I made no note, as I went through, of the number of pages I was examining.

Q. I withdraw it. How many pages do you suppose there are in the eleven issues you looked at?

4761

Mr. O'Brien: I object to that question.

The Witness: Once again, I am unable to state.

*By Mr. Bromley:*

Q. Did you know there were 1967 pages? A. I did not.

Q. Would it be fair to say that of these 1967 pages you did not read more than two or three? A. That would neither

*Peter Marshall—for Post Office—Redirect.*

4762 be fair nor accurate. I neither knew the total number of pages, nor the weight of the paper, nor the amount of ink that was printed upon them. These things I do not know.

Q. Forgetting about the ink for a minute, all you did was to take a quick glance at what was pointed out to you in the magazine? A. I spent, as I said, an hour or an hour and ten minutes. If that constitutes a quick glance, then a quick glance it was.

Q. But you only looked at the things that were pointed out? A. No. As I formerly testified, I looked at other things.

4763

— Mr. Bromley: That is all.

*Redirect Examination by Mr. O'Brien:*

Q. As a matter of fact, Dr. Marshall, I handed you the magazines and left it to you to make the examination yourself? A. Absolutely. I was not told what I should read. I followed merely the suggestions printed on this piece of paper (indicating).

Q. I won't ask you but a couple of more questions, Doctor, to straighten things out.

4764 At one time in his cross examination Mr. Bromley was discussing reporting various divorce cases and crimes and things like that, scandalous affairs apparently in his opinion, and he asked you if you objected to frankness and forthrightness in reporting. Did you mean by your answer to that that you objected to frankness or forthrightness, or did you mean that you objected to indecent dealing with intimate sexual details in such matters?

Mr. Bromley: I object to that question as leading, if the Court please.



*Peter Marshall—for Post Office—Redirect.*

Chairman Myers: It may be. Let him answer.

The Witness: I took the counsel to mean frankness and forthrightness in dealing with details of a sordid nature. I do object to that. Frankness and forthrightness in reporting factual events, I couldn't object to.

4765

*By Mr. O'Brien:*

Q. Now, does that fact that Father Flannagan or William Lyon Phelps or anybody else that has been mentioned here on cross examination as a contributor to Esquire, change your opinion as to the items which you surveyed in these eleven issues and upon which you decided to testify as you have here today? A. The fact that these gentlemen mentioned have contributed to Esquire may be a fault of judgment on their part. I am not responsible for their judgment. But the fact that their articles might be included does not in any way alter my opinion of the articles.

4766

Mr. O'Brien: That is all.

Mr. Bromley: That is all.

(Witness excused.)

Mr. O'Brien: May we have a recess at this time, because I have a witness coming at 2:00 o'clock?

4767

Mr. Bromley: I am forced to object to this; if the Board please.

It seems to me we have been putting up with enough dilly-dallying from Mr. O'Brien. We have been here at great expense and inconvenience. We have never asked for a five-minute adjournment. We have not asked for an adjournment at any time.

The Board has been very patient and has indicated a willingness to sit to almost any hour.

*Colloquy.*

4768

It does seem to me that after all these weeks that this large force of lawyers could get enough witnesses to have here and not have these constant interruptions and delays.

Mr. Hassell: I explained to the Board when I asked the Board to permit Mr. O'Brien to take charge of the rebuttal, that I had been taken completely by surprise as a lawyer, that any of this kind of testimony was admitted here. There never has been a case in any court, before any tribunal, in which this type of so-called evidence has been admitted.

4769

Chairman Myers: If I recall, there was some in a case in New York.

Mr. Hassell: I never heard of it and don't know of it.

Chairman Myers: I have.

Mr. Hassell: Was that a Federal case?

Chairman Myers: No, a State case.

Mr. Harding: The Parmelee case in this District.

Mr. Hassell: That case was referred to without being cited by counsel in order to get the admission of this type of testimony. In that case, the majority opinion—two judges in that Court out of five—one judge, Judge Benson, dissented.

4770

Mr. Justice Miller wrote the opinion of the Court. He, as a matter of pure and unadulterated dictum, indicated that expert testimony from philosophers and so forth might have assisted in that case, which was not at all like this case, didn't arise under the same statutes or anything of the kind.

The Court went out of its way, the majority of the Court went out of its way, to accept some statements in some books. That is the nearest to testimony of

*Colloquy.*

this sort I have ever seen in a case of this sort. Of course that was no testimony. The opinion of the Court stated that it was not, that there was a total absence of such evidence in the court below.

4771

Under those circumstances I think it is entirely reasonable, and under the further circumstances that the Post Office Department has no funds out of which to pay for witnesses attending here, has no funds to pay their expenses here or their time here, or to pay them any fabulous fee such as has been indicated here has been paid to witnesses appearing for the publisher that we are under a most tremendous handicap in meeting this testimony that has been offered here, I think it would be utterly unfair—

4772

Chairman Myers: You have had two weeks in which to do it.

Mr. Hassell: I haven't had two weeks.

Mr. Bromley: The gentleman got our brief two and a half weeks ago, in which we told him clearly we were going to proffer this kind of testimony; right out in the open told him what we were going to do.

Mr. Hassell: Well, I would like to poll the Board to see whether we can have until 2:00 o'clock in order to bring our witnesses.

4773

Chairman Myers: Well, you are not going to poll the Board; the Board will poll itself.

Mr. Hassell: All right.

Chairman Myers: So far as we are concerned, we try to indulge you in every respect. If you impute motives like that to us, I resent it for one.

Mr. Hassell: I am not imputing any motive whatsoever.

*Colloquy.*

4774

Chairman Myers: Then don't make any statement like that. So far as I have been concerned, I have been ready to go along with you all through, but when you come along with such a statement I will not.

Mr. Hassell: I am sorry. I apologize for that statement.

Chairman Myers: We gave you until 2:00 o'clock yesterday and we gave you until 10:00 o'clock today. We gave you everything you wanted. I think that that statement is entirely unwarranted.

4775

Mr. Hassell: I withdraw it. I am sorry I made it.

Chairman Myers: Let us try to get the rest of our witnesses in here at 2:00 o'clock.

Mr. O'Brien: We will try to get them in, one after the other. It is very difficult, we have no transportation to offer them, or anything else.

(Whereupon, at 11:45 o'clock a. m., the hearing was adjourned until 2:00 o'clock p. m.)

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**AFTERNOON SESSION.**

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4776

(The hearing was resumed, pursuant to the adjournment, at 2:00 o'clock p. m.)

Chairman Myers: Are you ready with the next witness?

*Solomon H. Metz—for Post Office—Direct.*

Mr. O'Brien: Yes, sir. Dr. Metz, will you take the stand.

4777

SOLOMON H. METZ, a witness called by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien:*

Q. Will you state your full name for the record, please, Doctor? A. My name is Solomon H. Metz.

4778

Q. You live in Washington, D. C., do you, Doctor Metz? A. Yes, sir.

Q. What address? A. 36 Channing Street, Northwest.

Q. You are a rabbi, are you? A. Yes, sir.

Q. Of what congregation? A. Adas Israel Congregation.

Q. Where is your synagogue located? A. 600 I Street, Northwest.

Q. Is this a large or a small congregation, as Jewish congregations go? A. Well, we have close to 600 members representing probably 500 families.

Q. 500 families? A. At least.

Q. Is it the largest congregation? A. It is the largest non-reformed congregation in the District of Columbia.

4779

Q. Are there any schools connected with your congregation, Doctor? A. We have three Hebrew schools where the children are taught three times a week and we also have a very large religious school conducted at the Jewish Community Center. Our registration of our religious school plus our Hebrew schools is in excess of 350 children, ranging in age from five to about sixteen.

*Solomon H. Metz—for Post Office—Direct.*

4780

**Q.** Now, are there any other organizations besides this school connected with your congregation for your people above sixteen? **A.** Well, we have a Brotherhood and we have, for instance, a group of boys between thirteen and seventeen who come to the synagogue for services. Then we have meetings of younger people, like the Junior Hadassah, young women, and then we have evening services, and I should judge that about sixty per cent of the people are between seventeen and thirty, I imagine, the early thirties.

4781

**Q.** Rabbi Metz, will you tell the Board whether or not you are consulted by individual members of your congregation, aside from the organizations you have mentioned or outside of your congregation, with respect to their personal problems? **A.** Very, very frequently.

**Q.** Would you say that some of those personal problems involve matters having to do with sex habits or morals? **A.** Well, morals, yes, including, of course, sex, too.

**Q.** Could you give us an approximation of how much of your time is devoted to such consultation? **A.** Well, I should judge about thirty per cent of my time probably is devoted to personal problems brought to me by various individuals, members of the congregation and non-members.

4782

**Q.** Rabbi Metz, have you at my request, examined issues of a publication known as *Esquire* for the months of January through November, 1943, inclusive, with particular reference to certain items enumerated in lists attached to the cover of each magazine? **A.** I have.

**Q.** Have you formed any opinion, Doctor Metz, as to whether or not the matter to which I have just referred, is of a decent or of an indecent character? **A.** Yes, I have.

**Q.** Will you tell the Board what is your opinion? **A.** It seems to me that the whole atmosphere of this publication is such as to reduce the main interest of living to sex, and



*Solomon H. Metz—for Post Office—Cross.*

then degrade sex to its lowest vulgar expressions, and as such I deem it destructive of morality and consequently ethics, and I furthermore deem that such publication is in a way preparing the ground for the downfall of our democratic system.

4783

Q. Do I correctly understand your reply to include the answer to my inquiry that you do consider this an indecent publication? A. I certainly do in the sense that it is destructive of standards of morality.

Q. And referring specifically again to the matter which I have described, would you say whether or not, in your opinion, such items constitute information of a public character proper for dissemination to the public—the persons with whom you deal or other members of the public? A. I deem it improper.

4784

Mr. O'Brien: That concludes my direct examination, Mr. Bromley, of Dr. Metz.

*Cross Examination by Mr. Bromley:*

Q. When did you first look at the eleven issues, Doctor?  
A. The eleven issues, about a week ago.

Q. Do you find the following joke to be destructive of morality and ethics, and preparing the ground for the downfall of our democratic system? A. Yes—which joke?

4785

Q. I will tell it to you.

"She: 'Would you like to see the place where I was operated on?'"

"He: 'No, I hate hospitals.'" A. It is not something which is very ennobling, is it? It is something which plays upon the pruriency of people.

Q. Will you answer my question? A. I certainly consider it improper.

*Solomon H. Metz—for Post Office—Cross.*

4786

Q. I didn't ask you that, sir. I asked you whether you considered that joke as destructive of morals and ethics. A. It is destructive of morals, yes.

Q. And ethics? A. I am not prepared on that particular part that this is destructive of ethics. I said when you destroy morality you eventually destroy ethics, and when ethics is destroyed you prepare the ground for a non-democratic form of government. That's all I said.

4787

Q. Do you think that joke which I have just told you is such a joke as to reduce the main interest of living to sex and then degrade sex to its lowest vulgar expression? A. It is a joke which is in line with exactly such a tendency.

Q. Did you read the joke about the blue booties in Esquire? A. No, I didn't.

Q. Did you read the joke about the man who saw the two girls in his Pullman berth? A. Yes.

Q. Is your opinion the same with respect to that joke? A. Yes, sir.

Q. Did you read "Portrait Above The Fire Place"? A. Yes.

Q. Did you read "The Fall of the Flattering Word"? A. I don't remember that.

4788

Q. How long a time did you spend? A. Well, I am not what you would call a reader of Esquire, but I have spent about three hours in the last week or so going over these copies, and I also used to glance at the Esquire from time to time, especially when I went to the dentist, waiting for my turn, and some other places. I used to glance particularly at the cartoons and the pictures which I consider most indecent. All the pictures, the majority of them, have the tendency to exaggerate the sex organs of the female.

Q. You spent about three hours on these eleven issues, did

*Solomon H. Metz—for Post Office—Cross.*

you? A. Yes, looking them over, particularly those cartoons and pictures.

4789

Q. Are you familiar with the author Sholem Asch? A. Are you addressing the question to me?

Q. To you. A. Yes, I am.

Q. What is his reputation? A. Well, Sholem Asch is considered an outstanding novelist, very popular.

Q. And he has a good reputation? A. I don't know about that.

Q. What would you think if he would write for an indecent magazine? A. I am in no position to answer that. It depends upon the temptation. Even the greatest were tempted. I don't know how much he is getting for his articles, but the temptation is very much. Even Sholem Asch may be tempted.

4790

Q. Would you write if you got enough money? A. No.

Q. Not you? A. No, never; no, sir.

Q. Did you know Sholem Asch was a contributor to Esquire? A. Oh, I didn't know.

Q. You didn't know that? A. No.

Q. Did you ever hear of Lord Dunsany? A. Yes.

Q. What about his reputation? A. As far as I know he was never in jail. I think his reputation is O. K.

Q. Would you think he would write for an indecent magazine? A. The answer that I gave to the first question applies to this case too.

4791

Q. Did you know that he was a contributor to Esquire? A. Well, I believe I saw his name in one of the issues some time back.

Q. Did you read Joseph Wechsberg's article on "School for Saboteurs"? A. No.

Q. Did you read William B. Ziff's article on "31 Lessons for Brass Hats and Bureaucrats"? A. I glanced at it superficially; I didn't read it carefully.

*Solomon H. Metz—for Post Office—Cross.*

4792

Q. Did you think it had a tendency to destroy morality and ethics? A. I don't think so.

Q. Did you read "I Lobby My Hobby", by Cy Endfield? A. No.

Q. Did you read "The Future of Air Power", by Robert W. Marks? A. I glanced at it but I haven't read it carefully.

Q. Would you think it would have a tendency to destroy morality and ethics? A. I don't think so.

Q. Did you read "The Unholy Horatio Alger", by Stewart Holbrook? A. No.

4793

Q. Did you read "West Point's First Captain", by Thom Yates? A. No.

Q. Did you read "Japan's Mein Kampf", by Curt Reiss? A. No.

Q. Do you know anything about Curt Reiss? A. I said I haven't read it.

Q. Do you know anything about Curt Reiss? A. No, I don't.

Q. Did you read "The Unpredictable Profile", by John Decker? A. No.

Q. Did you read the article "Marriage Makes Strange Bedfellows", by Lawrence Gould? A. No.

4794

Q. Did you read "The Court of Lost Ladies", Doctor? A. Yes, I read it partly.

Q. Partly? A. Yes, sir.

Q. Did you read "The Savage Beast In Us"? A. Savage beast? I don't remember that.

Mr. O'Brien: The witness may consult it. I assume.

*Solomon H. Metz -for Post Office—Cross.*

*By Mr. Bromley:*

4795

Q. That is the piece by Paul Gallico on burlesque. A. Yes, I read part of it.

Q. You read part of it? A. Yes.

Q. Would you name me one article or story or piece that you read in any one of these eleven issues that was not mentioned in the memoranda on the outside? A. No, I don't remember.

Q. It is a fact; isn't it, that you did not read all of the articles? A. No, I didn't.

Q. It is a fact, isn't it, that you didn't read all or any one of the articles or stories listed on the memorandum? A. I read a few of the shorter ones.

4796

Q. Could you name one that you read in its entirety? A. I read some of the jokes that are contributed, I think, by the readers. I read a few of them in their entirety.

And I looked at all the cartoons and all the pictures and I would say that when it comes to impressing young people it is the visual medium that is much more potent than the one we get by the ear.

Q. And thinking that way, you therefore did not pay much attention to the articles. Is that right? A. That is right, in part.

Q. Now, would you point out to me which section of the eleven issues it is that contains jokes contributed by readers? A. My memory isn't that good.

4797

Q. Upon reflection you know there is no such section, don't you? A. On page 10 I believe there are all kinds of things contributed by readers. The readers write in. I read some of them.

Q. You refer to "The Sound and the Fury"? A. I believe that's it.

*Solomon H. Metz—for Post Office—Cross.*

4798

Q. Being letters from readers of the magazine? A. Yes.

Q. You thought they were jokes? A. Some are intended to be funny and some are written in a way that it is hard to tell really what is meant. It takes a psychiatrist really to explain that.

Q. Would you say that the following joke would be destructive of morality and ethics in the sense in which you have used that phrase?

4799

"At a military wedding the groom only recently back from the Solomons had hardly glimpsed his bride before the ceremony. Therefore, when time came for the kiss it was a long one, lasting on and on until a child's voice rang out in the silence of the church: 'Mommy, is he spreading the pollen on her now?'" A. I think it is vulgar.

Q. But you do not think it could be destructive of morality? A. It is. Anything that is vulgar, systematically and consistently so; the whole atmosphere of the magazine is vulgar, always rotating around sex—I think such a magazine is destructive of morality and eventually other things, and eventually will pave the way for a serious political situation.

4800

Q. Is your opinion of a magazine like the New Yorker similar to that of Esquire? A. I don't read the New Yorker. I have glanced at it but I don't know much about it.

Q. Is your opinion of a magazine like Life similar to your opinion of Esquire? A. I very seldom read Life.

Q. What magazines do you read? A. I read the Atlantic Monthly, Hebert's Magazine, Ethics; I read the United States News regularly, I read the newspapers regularly, I read the Christian Century, I read occasionally Forum; I read quite a good many magazines on religion and magazines on economics and political science, a good many of them.



*Solomon H. Metz—for Post Office—Cross.*

Q. Do you read the Reader's Digest? A. Yes, I do. I get it regularly. I read most of the articles there—not all but most of them.

4801

Q. Would you say that the following joke was destructive of morality and ethics?

In "Caught in the Draft" Bob Hope, infatuated with Dorothy Lamour, is asked, "What's she got that the other girls haven't got?" "Nothing," he retorts, "but she groups it better." A. I am afraid I have not made myself understood. I am talking about the cumulative effect of this sort of thing, constantly being fed to the reader.

This joke in itself may not be exactly destructive of morality, but if you have a magazine that is entirely devoted to this sort of thing, I say it is definitely destructive of morality.

4802

Q. You mean that it is your opinion that Esquire is entirely devoted to that sort of thing? A. I said preponderantly.

Q. You don't mean entirely? A. I said preponderantly.

Q. You don't mean entirely. But you do mean preponderantly? A. Precisely.

Q. How many pages are these contained in the eleven issues which you examined? A. I can only give a guess—I don't know. They seemed rather bulky.

Q. What would your guess be? A. Probably about 100 pages.

4803

Q. About 100? A. Including the advertising pages.

Q. 100 pages including the advertisements, in the eleven issues? A. In each issue.

Q. 1100 pages altogether? A. That is right.

Q. How many pages do you suppose you have read? A. I have not read 1100 pages, I assure you. I must have read about a dozen pages and I have seen all the illustrations and all the pictures and all the photographs.

*Solomon H. Metz—for Post Office—Cross.*

4804 Q. So you have read about twelve pages? A. Yes, sir.

Q. Now, how many pages of photographs and pictures to which you have objected, would you say there were in addition to the twelve pages? A. My impression is that a majority of those pictorial illustrations are objectionable from my point of view.

Q. Would you give me an estimate of the number of pages? A. I haven't that kind of a memory. My impression is the majority are definitely objectionable.

Q. You mean the majority of the pictures and cartoons listed on these memoranda— A. No, I mean the whole thing.

4805 Q. So you object to much more contained in these magazines than the Government is specifying, do you? A. I certainly do.

Q. How many pages would you say altogether, counting the pictures, you objected to? A. I can't answer that question.

Q. Could you give me any estimate? A. No, I don't think so.

Q. Would it be as many as 50 pages? A. I haven't that kind of a photographic mind. I can't answer the question.

Q. Would it be 75 pages? A. I don't know the number.

4806 Mr. O'Brien: I object to pressing the witness. He has already said he can't tell.

The Witness: It would be impossible for a human being to go through 1100 pages or thereabouts and tell how many pages are taken up with pictures. I can't tell you.

*Solomon H. Metz—for Post Office—Cross.*

*By Mr. Bromley:*

4807

Q. You couldn't give us any estimate at all? A. No.

Q. Did you look at the art section of each of the issues?

A. Yes.

Q. Does your objection extend to that? A. You mean the Varga girls?

Q. Didn't you know there was an art section in each of the issues? A. I was interested in the pictures; I didn't look at the section they belonged in. Whether the thing is in an art section doesn't make any difference. It doesn't make any difference whether it is in an art section or not.

4808

You must realize my time is occupied—I don't say it is valuable—and the pictures are easy to read. You can glance through a number of pictures in a very short time. I don't read the headings or the explanations.

Q. I want to find out from you, sir, if you include in your condemnation the pictures reproduced in the art section of these eleven issues. A. I don't know if the pictures were included in the art section or in the other section, but I know that I looked at all the pictures and the majority are definitely objectionable.

Q. And you made no distinction in your mind between the art section and the others? A. I made a distinction between the pictures that were not objectionable and the others which were.

4809

Q. But you have no distinction present in your mind now between the art section and the other sections? A. I don't remember whether they were in the art section or the other section. I have no recollection.

Q. Now, would your answer be the same as you have previously given with respect to this joke:

"During a heavy bombardment of an English city in

*Solomon H. Metz—for Post Office—Cross.*

4810 'Eagle Squadron'—that is a motion picture—a warden peered in and called, 'Are there any expectant mothers here?'

"After a very brief pause a feminine voice replied, 'Hard to say; we have only been down here a few minutes.'" A. I think it is vulgar.

Q. Destructive of morality? A. Yes, sir. Anything that is vulgar is destructive of morality, anything that is consistently and systematically vulgar.

Q. Destructive of morality? A. Yes, sir. Anything that is vulgar, that is destructive of morality. That is the persistence of it.

4811 Q. You make the same answer to this joke:

"Two London charwomen were discussing the inconveniences of the black-out. 'But it's a necessary evil', said the proverbial Mrs. Malaprop, 'else we're possibly likely to be blasted into maternity.'

" 'Tis so', said her companion, 'But the worst of it is we'd never know who done it.'" A. I think it is definitely obscene, one of the worst you ever read.

Q. One of the worst I ever read? A. Yes, sir.

Q. And you feel the same way about this, then:

4812 "In a restaurant at Columbia University, a refugee professor, speaking English with an acquired precision which so often shames the native-born, ordered figs and cream. The waitress brought a dish of figs covered with cream. 'I ordered figs and cream', the professor protested. 'They are there', she retorted. 'But this is figs with cream', he persisted. 'But I don't see—' she began, bewildered. 'Madam', said the professor icily, 'would you say a woman and child were the same as a woman with child?'" A. I think it is also a vulgar joke. What I am driving at is this, that to reduce everything to proportion in sex to the lowest level

*Solomon H. Metz—for Post Office—Cross.*

is very bad and men being fed on this sort of foolishness will have no respect for the sacred things and for human personality; he will have no respect for the Bible or those laws of chastity or purity or discipline.

4813

I said definitely that it is bad and obscene and from that point of view it is destructive of morality and, therefore, of ethics and ultimately of our very system of life and way of life, because it has no high regard for human dignity and for the eternal things in life, and sex is a sacred trust to man because it is a source of life.

Q. And should not be joked about? A. No, sir; not in that way, not systematically, and it is vulgar, obscene. As I see many of those cases, boys grow up without any respect for anything; they become sophisticated before they attain their maturity.

4814

Q. And you think of sophistication as an evil, don't you? A. Sophistication as a way of life. It is a way of life and not to be taken by looking at things in that way.

Q. Then it is an evil way of life, isn't it? A. I didn't say that at all.

Q. What did you say? A. I said sophistication is a way of life and a way of developing things. Sophistication that borders on evil is definitely a danger to our way of life.

Q. Because it is evil? A. Anything that is destructive is evil; anybody knows that.

4815

Q. And, therefore, you would think the same about this joke? A. Well, let us hear the joke first.

Q. "I won't offer you a cocktail, Mr. Brown", said the hostess, "since you are the head of the Temperance League."

"No, I am the president of the anti-vice league."

"Oh. Well, I knew there was something I shouldn't offer you." A. I don't see anything to that. It don't register, to use the vernacular. I don't think of it—don't really know what the whole thing is about.

*Solomon H. Metz—for Post Office—Cross.*

4816

Q. You don't get that one? A. No.

Q. Well, do you get this one?

"A young lady with a touch of hay-fever, took with her to a dinner party two handkerchiefs, one of which she stuck in her bosom. At dinner she began rummaging to right and left in her bosom for the fresh handkerchief. Engrossed in her search, she suddenly realized that conversation had ceased and people were watching her fascinated.

"In confusion she murmured 'I know I had two when I came'. A. I can't get that either.

4817

Q. You don't understand that either? A. It is supposed to be funny but I can't see it.

Q. You don't think it is vulgar? A. It is too stupid even to be vulgar.

Q. And this one: "Harvard men are gentlemen, says Margie Hart, who outstrips (at the box office) even Gypsy Rose Lee. 'And you can always have a good long talk with a Princeton man. But do they teach anything at Yale but blocking and tackling?'" A. I think it is vulgar.

Q. And this one: "Remember when Dorothy Lamour came out on the screen in her sarong—how quiet it was?

4818

"Yeah. You could hear the soldiers waiting for a pin to drop." A. I just guess it is suggestive, that she would drop her clothes probably. That is so they could see more of her. I think it is sort of lewdly suggestive.

Q. And, of course, Doctor, it wouldn't affect your opinion a bit if you knew that all of those jokes I have read were out of the Reader's Digest, would it? A. Not a bit at all.

Q. Not a bit? A. If it is obscene in the Reader's Digest it doesn't change it at all. I suppose if I should tell these jokes would it make any difference or even you?

Q. Look at that cartoon and tell me what you think of



*Solomon H. Metz—for Post Office—Cross.*

that, will you? A. I don't think of it. It don't register either. I can't quite get this joke.

4819

Q. You see that a young girl and a young man are necking on a sofa? A. You call this necking here?

Q. What do you call it? A. I don't know. I am not experienced, I can't say very much about it.

Q. Did you see any pictures in Esquire of necking? A. Yes, I did.

Q. You did? A. Yes.

Q. But you can't tell that this is necking, is that right? A. I will tell you the reason why, you see. The other one is in color and this is in black and white.

4820

Q. You can't tell what necking is in black and white, is that it? A. That is right, it is exactly right. It is the color that makes all the difference in the world. It is the atmosphere and the color and the background and everything else. That is the way the human mind reacts.

Q. Well, look at this cartoon. That is not in color. That could be indecent, could it? A. That looks to me like a very strong necking act.

Q. Like what? A. A very strong necking act, I imagine.

Q. Well, is that decent or indecent? A. Well, I don't even say it is as bad as most of the things I have seen in Esquire.

4821

Q. Well, is it decent or indecent? A. It is on the borderline, borderline case.

Q. On the borderline? A. Yes, on the borderline.

Q. Look at this one (handing to witness.) A. This one here (indicating)?

Q. Yes. A. Well, it is vulgar.

Q. It is vulgar? A. I imagine so.

Q. When you say you imagine so, you mean to say yes it is vulgar? A. Well, not emphatically so; I like to be fair, all grades.

*Solomon H. Metz—for Post Office—Cross.*

4822 Q. All grades? A. Certainly; all sorts of grades in black and gray; you know that is the way it is.

Q. Now, would your opinion be changed if you knew that those three cartoons were published in the Saturday Evening Post? A. Not in a bit.

Q. I show you this cartoon and ask you what your opinion of that one is? A. Well, I don't know what to say about this.

Q. Do you see that the lady has no clothes on? A. I don't see that at all.

Q. You don't? A. Only this part I see here (indicating).

4823 Q. What you mean to say— A. Maybe she has clothes; I am not sure that she is naked.

Q. Well, you find that decent, do you? A. Well, I wouldn't class it as obscene, no.

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: I have no objection.

Chairman Myers: It may be admitted without objection.

(The cartoon above referred to was marked Respondent's Exhibit No. 141 and was received in evidence.)

4824

Mr. Bromley: Will you mark these three Saturday Evening Post pages for identification?

(The pages referred to were marked Respondent's Exhibits Nos. 142, 143, and 144 for identification.)

Mr. Bromley: I offer Respondent's Exhibits for identification 142, 143, and 144.

Mr. O'Brien: No objection.

*Solomon H. Metz—for Post Office—Cross.*

Chairman Myers: They may be admitted without objection.

4825

(Respondent's Exhibits Nos. 142, 143, and 144 were received in evidence.)

*By Mr. Bromley:*

Q. In the November issue at page 83 I show you the cartoon in the upper left-hand corner and ask you if you studied that one. A. Yes, I saw these cartoons, yes.

Q. Did you look at that one in the upper left-hand corner? A. Yes.

4826

Mr. O'Brien: What page is that?

Mr. Bromley: 83.

*By Mr. Bromley:*

Q. Now, do you consider that to be an indecent cartoon?

A. I think it is.

Q. You think it is? A. Yes.

Q. This is the cartoon that is subtitled, "My date's at the awkward age; all hands and no dough." Is that right? A. Yes.

4827

Q. Now I show you this cartoon and ask you if you think that is indecent or decent. A. I think it is indecent.

Q. Indecent? A. Yes, sir.

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: No objection.

Chairman Myers: It may be admitted without objection.

*Solomon H. Metz—for Post Office—Cross.*

4828

(The cartoon referred to was marked Respondent's Exhibit No. 145 and received in evidence.)

*By Mr. Bromley:*

Q. Did I understand you to say, Doctor, that 30 percent of your time was spent in discussing sex problems with your parishioners? A. I never said that. I said that about 30 percent of my time is devoted to personal problems that people bring to me.

4829

Q. But those are not sex problems generally? A. Not all.

Q. Not all? A. No.

Q. About what percent? A. I am in no position to say.

Q. You can't tell? A. No.

Q. Well, less than a majority of the problems that come to you are sex problems? A. I beg your pardon?

Q. Would you say that less than a majority of the problems that come to you are sex problems? A. I think so, less.

4830

Q. You are what is known as an orthodox rabbi, are you not? A. I am a graduate of the Jewish Theological Seminary, the conservative branch, so I am really a graduate of the conservative school.

Q. Is it proper to refer to you as orthodox, a term which we have been frequently using here? A. I don't think it would be quite accurate.

Q. You are not a reform rabbi? A. No.

Q. You are a conservative, is that right? A. Yes.

Q. Is there a more conservative branch for the Hebrew faith? A. Oh, yes.

Q. What? A. Orthodox.

*Solomon H. Metz—for Post Office—Cross.*

Q. The orthodox is more conservative? A. In the sense of following everything that is traditional.

4831

Q. But with regard to their attitude toward morality? A. Well, I don't think there is any difference.

Q. No difference? A. Well, I am not intimate enough with all the orthodox rabbis.

Q. What is your general impression? A. I have no general impression. I am discussing the theology, ritualistic theology or ritual. The orthodox are more conservative than I am, that is, my school. As far as orthodox in other things, there are all sorts of variations. The personal equation, the personal way of looking at it.

4832

Q. Will you give me your opinion of this cartoon? A. I think it is indecent.

Q. Your answer is, you think it is indecent, is it? A. Yes.

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: No objection.

Chairman Myers: Without objection, it may be admitted.

(The cartoon referred to was marked Respondent's Exhibit No. 146 and received in evidence.)

4833

*By Mr. Bromley:*

Q. Will you tell us your opinion of this cartoon, Doctor? A. I don't think it is. The answer is, no.

Q. Meaning that you think it is decent? A. It is not indecent.

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: No objection.

*Solomon H. Metz—for Post Office—Cross.*

4834

Chairman Myers: It may be admitted without objection.

(The cartoon referred to was marked Respondent's Exhibit No. 147 and received in evidence.)

*By Mr. Bromley:*

Q. What is your opinion of this cartoon at the right-hand corner of the page? A. I don't know the meaning of it. I don't know what "traction splint" means so I am not in a position to tell you.

4835

Q. A traction splint is a piece of wood that first-aiders and Red-Crossers and doctors join on limbs to help spread the broken bone. A. I think it is indecent.

Q. Your answer is, you think this is indecent, do you? A. Yes.

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: No objection.

Chairman Myers: Admitted.

(The cartoon referred to was marked Respondent's Exhibit No. 148 and received in evidence.)

4836

*By Mr. Bromley:*

Q. In your opinion is this cartoon indecent? A. I wouldn't say so.

Q. You wouldn't say so? A. That is right.

Q. Do you remember the cartoon in Esquire in which the sailor has a figure tattooed on his arm with the hula girl looking at it? A. Yes, sir.

Q. What would you say about that cartoon? A. It is the



*Solomon H. Met.—for Post Office—Cross.*

grouping. It is the whole thing. What we are here discussing is the way things suggest—the suggestiveness of the thing.

4837

You will find the very same thing minus other elements will be perfectly innocuous. Add one little touch and the whole thing is changed. I don't think this is bad.

Q. But the one in Esquire you think is bad? A. I think so.

Mr. O'Brien: I suggest the witness be shown the cartoon in Esquire.

The Witness: It is the vulgarness of the picture, the whole action.

4838

*By Mr. Bromley:*

Q. And the fact that it is in color, too? A. It helps, certainly; that is why girls paint their faces.

Q. Did you mean by that last answer that women painting faces is indecent? A. Some women—I didn't say they are indecent. All I want to prove is that color is very important.

Mr. O'Brien: Here is the picture. It is in the October issue, page 37.

The Witness: I think this is much worse than the other.

4839

*By Mr. Bromley:*

Q. You see now that it is not in color, don't you? A. That is right, it is not.

Q. You think it is worse than the cartoon which I showed you? A. Yes.

*Solomon H. Metz—for Post Office—Cross.*

Mr. Bromley: I offer the cartoon from Colliers for July 31, 1943, in evidence.

Mr. O'Brien: No objection.

Chairman Myers: Admitted.

(The cartoon referred to was marked Respondent's Exhibit No. 149 and received in evidence.)

*By Mr. Bromley:*

Q. I show you the pen-and-ink drawing on page 95 of Esquire for November, the camouflaged soldiers looking at the girls in swimming. Is that decent or indecent? A. I don't think this is indecent.

Q. You don't think it is indecent? A. That is right.

Q. Do you think the joke which is told beneath it is indecent? A. I think it is; it is definitely vulgar.

Q. It is definitely vulgar, you say? A. Yes, disrespectful.

Q. Disrespectful? A. Yes.

Q. Do you use "disrespectful" as a synonym for "vulgar"? A. No, I don't.

Q. Will you look at the joke at the bottom of the third column, at page 95 of the November issue? Is that vulgar? A. No, this is not, in my judgment.

Q. Did you know at the time you testified on direct examination that these two things were things that had been complained of by the Post Office Department? A. I know nothing about it.

Q. You know nothing about it. I thought you told me you had examined all of the material that was specified in these eleven issues. A. I looked through all the pictures in all the issues.

Q. Then your testimony only goes to the pictures. Is that

*Solomon H. Metz—for Post Office—Cross.*

right? A. And I also read some of the jokes that were indicated, some of the parts that were pointed out.

4843

Q. Didn't you mean to create the impression on this Board that all the material specified on these slips was indecent?

A. I never said it.

Q. You never said it? A. No, sir.

Q. You never meant to create that impression? A. I am not testifying about impressions. I am giving my opinion on things that I saw. That is all I am here for.

Q. Didn't you see that these two things that you now say are perfectly decent were here, before? A. I knew they were here.

4844

Q. And you knew before you testified that some of the things complained of were decent, didn't you? A. I said the majority of the things were obscene. That is what I said from the very beginning—talking about the majority of the pictures. That is all I said.

Q. You did not mean all of it was indecent? A. That is what I said from the beginning.

Q. You did not mean all of it was indecent? A. Definitely not.

Q. Will you look at Life for July 21, 1941, pages 55 to 58, inclusive? A. If I looked at it—no, I did not.

Q. Will you look at it? A. I will be glad to.

4845

Q. Here it is (handing magazine to witness). A. Yes, I have looked at it.

Q. What is your opinion of those photographs? A. I think they are not the proper photographs for a magazine.

Q. What do you mean by that, Doctor? A. I think they are not conducive to strengthening morals and I mean they influence young people—the influence on young people is not at all desirable and, therefore, I would call them from this point of view objectionable.

## Solomon H. Metz—for Post Office—Cross.

4846

Q. But you wouldn't call them indecent? A. Yes, I think I would.

Q. You think you would? A. Yes.

Q. Are you familiar with the present-day bathing suits worn by many women on our beaches? A. Yes, sir.

Q. What is your opinion of it as far as indecency is concerned? A. I think they could stand reform too.

4847

Q. Do you go so far as to say that a bathing suit as shown on page 55 is indecent, as worn by women? A. It is not only the bathing suit, but the pictures drawn on her legs to call attention. That is the thing that is more objectionable really than anything else.

Q. What do you say about the bathing suit with the bare midriff? A. The bathing suit itself without the trimmings, the pictures on the legs—that wouldn't be so bad. After all, *mores* change.

Q. And present-day *mores* do sanction bathing suits as pictured on page 55, don't they? A. It seems that present-day *mores* doesn't find them very objectionable.

Q. And you agree with that, of course? A. Who says I agree with that?

Q. What is that? A. I didn't say I agree with that.

4848

Q. You do, don't you? A. All I said was that what makes this particular thing objectionable is the pictures on the legs and that makes it suggestive, and because it is suggestive it is objectionable. Because it is objectionable I think it is indecent.

Q. You agree, don't you, that present-day customs sanction this type of bathing suit? A. It doesn't sanction the rest of it.

Q. Let's take the flags off her legs. A. We can't. How can you take it off? It is all one picture, all one impression.

*Solomon H. Metz—for Post Office—Cross.*

Q. You can't take it off? A. Of course you can't. Any psychologist knows that.

4849

Q. Suppose you rub out the flags. A. It would be less objectionable.

Q. Now, if the flags were rubbed out you would have no objection to the bathing suit? A. You mean personally?

Q. Personally. A. Personally I would.

Q. Personally you would? A. Yes.

Q. You think the fact that women wear such bathing suits is corrupting? A. Well, it is exaggerating this sex, as one would call it, and from that point of view I personally think it is not quite the thing to do.

4850

Q. You think it is destructive of morality to that extent?

A. I would say it is really a symptom more than a cause. It is a symptom of civilization, a condition and cause of condition. It is symptomatic of general laxity of the times pertaining to these things we are discussing.

Q. Do you think as of today there is a general moral laxity in this country, Doctor? A. You mean compared with what? Everything is comparative, you know.

Q. Compared to what you conceive to be right as distinguished from wrong. A. This is not a comparison. This is an opinion. I mean, compare one period with another period.

Q. Would you say that the period of the present day was one in which there was a general laxity of morality as compared to what conditions were fifty years ago? A. I should judge so, I think so, yes.

4851

Q. Do you think things are getting progressively worse? A. They may get better.

Q. But up to now, for the past fifty years, things have been getting progressively worse? A. My memory doesn't go back fifty years.

*Solomon H. Metz—for Post Office—Cross.*

4852

Q. How far does it go? A. The last two generations, the last thirty years, I think things have been getting worse.

Q. Much worse? A. I can't say that. You can note a tendency. I can't measure those things, and neither can you.

Q. Well, whether you can measure it or not, it is a tendency which you deplore, isn't it? A. Precisely true.

Mr. Bromley: May I have this issue of Life for July 21, 1941, marked for identification?

*By Mr. Bromley:*

4853

Q. Are you a friend of Dr. Karpman? A. The first time I met Dr. Karpman was this afternoon.

Mr. Bromley: This issue of Life for July 21, 1941, I now find is Exhibit 57 in evidence.

*By Mr. Bromley:*

Q. What is your opinion of advertising such as this which I now show you? A. Definitely objectionable.

Q. Indecent? A. Well, I don't know. It is objectionable.

4854

Q. What I have shown you is Exhibit 20. Would you find that sort of advertising destructive of morality to any extent? A. To some extent, yes.

Q. Would you find it corrupting of morals? A. It is undermining our moral values, our moral judgments, particularly with young people.

Q. There is a lot of advertising like that in the bathing suit field, isn't there? A. I don't read those advertisements, as a rule, so I can't tell.

Q. Do you ever read any perfume advertisements? A. You mean in magazines?



*Solomon H. Metz—for Post Office—Cross.*

Q. In magazines. A. I don't recollect.

Q. You don't recollect? A. No.

4855

Q. Do you ever read any tobacco advertisements? A. Read them, just systematically?

Q. See the pictures. A. I see the pictures but I don't remember them. I am not sufficiently interested. I have given up smoking six or seven years ago.

Q. Would you say these two photographs represent substantially the change in women's bathing dresses which has occurred over the last generation? A. It does.

Mr. O'Brien: I object to that question. That doesn't seem to have any relevancy to the witness' testimony, whether he has kept up with the changes—

4856

Mr. Bromley: He has answered it, Mr. O'Brien. He says it has.

Mr. O'Brien: I move to strike the question and the answer.

Chairman Myers: Overruled. It doesn't mean much anyhow.

Mr. Bromley: This one is Respondent's Exhibit 131 and this one I now offer in evidence.

Chairman Myers: Admitted.

(The document above referred to was marked Respondent's Exhibit No. 150 and received in evidence.)

4857

*By Mr. Bromley:*

Q. Did you read the column in the January issue of Esquire about "Doctor Diddle"? A. No.

Q. Did you read Gilbert Seldes' review of the "Star and

*Solomon H. Metz—for Post Office—Cross.*

4858 Garter"? A. I just read, I believe, the first paragraph. I didn't continue. I believe I glanced through it.

Q. Did you read "Shor Nuff"? A. No.

Q. Did you read "The Unsinkable Sailor"? A. I don't remember having read it.

Q. Did you read "Home Sweet Ruby Street"? A. I don't think so.

Q. You don't think so? A. No.

Mr. O'Brien: I think he should be shown the articles.

4859 Chairman Myers: Refresh his recollection of the articles by showing them to him.

*By Mr. Bromley:*

Q. You remember "Home Sweet Ruby Street", don't you? A. I just glanced at it.

Q. You just glanced at it? A. I saw the pictures.

Q. I believe you told me before you had not read "The Fall of the Flattering Word" on page 68? A. No.

Q. You did not read it? And you told me before you had not read "The Court of Lost Ladies"? A. I glanced through some of it. I didn't read it in its entirety.

4860 Q. Did you know that several reputable witnesses have testified here that "The Court of Lost Ladies", was a good piece, a decent piece? A. I know nothing about it.

Q. You know nothing about it. That wouldn't make any difference to you, would it, no matter who testified? A. Not at all. I am supposed to give my opinion.

Q. You don't consider that indecent, do you, "The Court of Lost Ladies"? A. I remember the illustrations were definitely indecent.

*Solomon H. Metz—for Post Office—Cross.*

Q. What about the article itself? A. As I said, I have not read it. I just glanced through it. I am unable to judge.

4861

Q. Now, will you point out what there is indecent on the page 60 about the illustration? A. Well, you can see what kind of ladies these are from the way they sit and their whole attitude and this thing too, just an exhibition—just the same old prurience.

Q. This picture at the bottom of the left-hand corner of page 61 is just an example of the same old prurience to you, is it? A. Yes.

Mr. Bromley: I would like to call the Board's attention to this one down here, the officer with the girl in front of the jail door.

4862

*By Mr. Bromley:*

Q. Did you read "2 Libel Suits"? A. No.

Q. Did you read "Dog's Worst Friend"? A. That poem?

Q. Yes. A. Yes, I read that.

Q. Did you read "Many Wives Too Many"? A. You mean the whole article there?

Q. Yes. A. No, I didn't read all of it, but I read the illustrations and I read some excerpts there. They certainly were indecent.

4863

Q. Now, will you point out to me the excerpts from "Many Wives Too Many" which you found to be indecent? A. They tell us, for instance, that two—Dr. Joad is quoted: "I, for instance, like the company of different women for different purposes, one to go out to dinner with, one to go to church with, another to cook for me, another to mother me, another to play games with, and another to make love to."

*Solomon H. Metz—for Post Office—Cross.*

4864

Q. Is that the indecent passage to which you refer? A. Others, too, impressed me as indecent.

Q. Point out another one. A. If you give me enough time.

Q. Take all the time you want. A. It gives you a schedule for a six-wife batting order which is something that should be done before it is too late.

I think the thing probably would go on a weekly timetable like this, one wife to go out to dinner with four times a week, and so forth.

I found this objectionable.

4865

Q. Do you think that is indecent? A. Yes, sir.

Q. You think that is an article advocating six wives? A. Well, it is considering it a good policy, though.

Q. You think it is an article which puts forward the proposition of an American man having six wives? A. No, not that.

Q. What do you think it is about? A. I think the whole approach to the institution of marriage portrays vulgarity and desire for lowering established civilized standards of marriage.

Q. Did you hear of Dr. Joad? A. No.

4866

Q. What has Dr. Joad got to do with this article, anything? A. I don't understand your question.

Mr. Bromley: Will you read it to him, please?

(Question read.)

The Witness: I don't know about Dr. Joad in the article. I am just quoting you the passages that impress me as indecent.

*Solomon H. Metz—for Post Office—Cross.*

*By Mr. Bromley:*

4867

Q. You haven't got the foggiest idea what the article is about, have you?

Mr. O'Brien: That's rhetoric. I don't know whether it is a question or not. It is a very insulting one if it is, and I move that it be stricken. I don't blame the witness for not answering it.

Chairman Myers: The witness is the judge of it. If he thinks so he can say so and if he doesn't he can say so.

The Witness: What is the question?

4868

Mr. Bromley: Read it, please.

(Question read.)

The Witness: Well, that is the general opinion.

*By Mr. Bromley:*

Q. Well, what is your opinion? A. I am not answering such a question.

Q. You refuse to answer? A. Yes, sir.

Q. What is the article about? A. I told you from the very beginning that I didn't read the article in its entirety, but I read certain passages there that struck me as indecent. That is all I said.

4869

Q. So you don't know what the article is about, do you?  
A. The passages seem to deal with an arrangement where a man would have six wives and he made an arrangement, a working schedule with his six wives. That seems to be the impression from the passages I read, but I said I didn't read the article in its entirety.

*Solomon H. Metz—for Post Office—Redirect.*

4870

Q. And that is the way you treated all these articles that you read, isn't it? A. I told you from the very beginning that I did not read the articles in their entirety. I read passages but I looked through all the pictures and the illustrations. That is what I told you from the very beginning. I don't want to go back over it again.

Q. You don't like to go over it again? A. I don't like to waste time.

Q. What is the article "Wise Men Pick Pyknic Girls" about? A. I don't remember it.

4871

Q. What is Mr. Nathan's theatrical criticism in the November issue about? A. I don't remember.

Q. Did you find anything indecent in it? A. I didn't read the article.

Q. Yet you come here and are perfectly willing, aren't you, to pass judgment on a magazine without reading anything in it and looking only at the pictures? A. That is right.

Mr. Bromley: That is all.

Mr. O'Brien: Just a minute, Doctor.

*Redirect Examination by Mr. O'Brien:*

4872

Q. Now, I show you "Many Wives Too Many". You have seen that before, haven't you, Dr. Metz, and you have seen these pictures? A. Yes, I did.

Q. That is the article you have just been discussing with counsel on cross examination. You see this picture of the woman in bed and the man looking at her? A. Yes.

Q. And the woman sitting on the man's lap? A. Yes.

Q. You saw this article that is marked about loving time interfering with feeding time and all that? Will you look at that again and tell the Board if you have any dif-



*Solomon H. Metz:—for Post Office—Redirect.*

ferent opinion from what you previously expressed. Doctor? A. It says: "When it came time for the over-sexed spouse to get around to his loving assignment, the feeding female might also have other arrangements in mind, and out of the entire sextette, she might be the one least inclined to cause any loving trouble".

4873

That is the kind of stuff I glanced through and my impression, therefore, is that it is indecent and lowers the whole institution of marriage to a barn-yard level; systematically so. If this is not destructive of morality, I don't know what is.

Q. Now, Dr. Metz, or Rabbi Metz, counsel on cross examination had some considerable discussion with you about bathing suits or swimming suits as used on the beach, appearing in photographs. Do you make any distinction about a situation in which a person goes swimming in a bathing suit and poses for a picture in a magazine in a bathing suit? A. I don't quite understand the question.

4874

Q. The point I am asking you is whether there is any distinction in using a bathing suit to go bathing and a bathing suit to pose for a picture in a magazine? A. Definitely so.

Q. What distinction would you make? A. I think posing in a bathing suit is something entirely different from going in swimming in a bathing suit.

4875

Q. In other words, you don't object to people bathing in bathing suits but posing before a camera and having it published for general distribution creates an entirely different impression, is that it? A. Exactly.

Q. And the second use of it for public exhibition in a bathing suit by means of pictorial distribution may be obscene or indecent, is that correct? A. Yes, sir.

*Solomon H. Metz—for Post Office—Redirect.**By Mr. Bromley:*

4876

Q. Did you read "Portrait Above the Fireplace"?

Mr. O'Brien: I object to further cross examination at this time.

Chairman Myers: Mr. O'Brien has not finished. Mr. Bromley.

Mr. Bromley: He sat down.

Mr. O'Brien: We are not in Congress now.

*By Mr. O'Brien:*

4877

Q. Now, Doctor Metz, at the time when you did examine these magazines and you looked at these articles, is it or is it not true that you did find in there passages at that time upon the basis of which you established in your own mind an opinion concerning the article itself? A. Yes.

Q. Yes. Some of those passages you were unable to remember since you haven't been perusing the magazine ever since, isn't that true? A. That is right.

Q. If those passages were pointed out to you by counsel on cross examination you would have been able to give him your opinion then and there— A. I imagine I would.

4878

Q. (Continuing): —as to whether they were indecent or not? A. I think so.

Q. Yes, sir. Now, Dr. Metz, I show you again the June issue, page 134, the item entitled "Libel suits were as wine to that hell-firin' editor of the old West, Dave Day." And I ask you to read the marked portions therein and tell the Board what you think about them, if you please, sir? A. It says: "Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion."

*Solomon H. Metz—for Post Office—Redirect.*

"An epitaph:

4879

"Here lies the body of poor old Charlotte.  
Born a virgin, died a harlot.  
For eighteen years she kept her virginity,  
An all-time record in this vicinity."

(Laughing.)

I don't think it is necessary for me to read the rest. Why bother with it?

Q. Would you tell the Board whether you consider these things decent or indecent? A. Well, I will leave it entirely to the Board's own judgment.

4880

Q. Now, Doctor Metz, I show you again the January issue, the two pages of jokes there and ask you whether you saw these or these marked in the last column on page 123, the one entitled "Dear Doctor Diddle"?

Mr. Bromley: He has testified he didn't see them; he didn't read them.

Mr. O'Brien: He forgot a good many things.

The Witness: Well, I remember reading about the blushing girl every time she takes her bath.

It says: "Dear Doctor Diddle. I am a beautiful brunet but I have a serious problem. Every time I take a bath I blush. What shall I do? Twenty." 4881

"Dear Twenty: Before you undress, put on a blind-fold."

I read this one; I just happened to remember that. I don't think I read the other one, though.

*Solomon H. Metz—for Post Office—Redirect.*

4882

*By Mr. O'Brien :*

Q. What do you think of that joke, Doctor? A. It says: "Dear Doctor, I am a lady forty years old. I have been married to eight different men in seven different countries. Please tell me what I have to look forward to. Anxious.

"Dear Anxious: I am not sure about what you have to look forward to, but lady, you sure have a hell of a lot to look back on."

Well, this I didn't read before; it is the first time.

4883

Q. What do you think of those jokes, Doctor Metz? A. Not much.

Q. You mean to say by that that you think they are indecent? A. I certainly do.

Q. Here is the article which you were asked about: "The Savage Beast In Us", an illustrated article in the May issue?

A. Yes, I remember the illustrations. Yes, sir, I definitely remember them.

Q. Will you look at the marked passages and see if you remember reading those? A. I don't think I read them all.

4884

Q. Will you read them, please? A. Here is a good one: "I have yet to hear of a single instance where any average male, having been confronted with this tidbit, has rushed panting into the night to seek assuagement for the fires kindled in his circulatory system". It goes on: "If anything, this abdominal replica of Polyphemus has the chilling effect of examining a fine piece of velvet and finding a cigarette hole in the middle of it", etc. I really don't think I want to read this. The illustrations are sufficient.

I said before I didn't read it in its entirety.

Q. What is your opinion; that it is indecent? A. Yes, it is indecent. I mean particularly the illustrations.

Q. Particularly the illustrations? A. Yes, and those passages I read.

*Solomon H. Metz—for Post Office—Recross..*

Q. Here is the October issue: "Wise Men Pick Pyknic Girls". This is the one you said you couldn't remember. A. I couldn't remember that.

4885

Q. I call your attention to the illustrations in this article particularly the one in the center of the page concerning measurements. A. I haven't read it.

Q. You haven't read it? A. No, sir.

Q. Would you tell the Board what you think about the illustrations in this thing? A. Yes. Minus the text I don't think they are so dangerous, but not having read the text I can't express an opinion.

Mr. O'Brien: That is all I have.

4886

*Recross Examination by Mr. Bromley:*

Q. Do you know what the purpose or thesis of Paul Gallico's article on burlesque is? A. No.

Q. You are willing to condemn the isolated sentences which you have read without reading the article or knowing what it is about? A. I am just testifying on the parts I have read and the illustrations.

Q. I say you are willing to condemn— A. The parts I have read I definitely condemn, and the illustrations I certainly condemn as indecent.

4887

Q. It would not change your opinion, knowing that this was an article exposing the tawdriness of burlesque, would it? A. It wouldn't make a bit of difference.

Q. Wouldn't make a bit of difference? A. Many times you see this sort of thing, just to be within a so-called framework of—what shall I say—legitimacy.

Q. If a writer had a purpose in taking this approach just to be within the framework of legitimacy, that would be obscene, would it? A. I never said that.

*Solomon H. Metz—for Post Office—Recross.*

4888

Q. Wouldn't it be? A. I never said that.

Q. Would it be? A. Would it be what?

Q. Obscene, to make it appear that he was opposing something when he was really highly endorsing it surreptitiously?

A. What I am testifying to is how these illustrations in my judgment affect a reader, and I said definitely that these illustrations are definitely destructive of morality. There is no reason why this man couldn't have written his article without these lewd illustrations.

Q. Then you don't mean to say that there was anything in the article that was indecent? A. I said that which I read was definitely obscene.

4889

Q. Then you found both in the text and the pictures things that are destructive of morality, Doctor? A. Yes, that which I read.

Q. Now, it turns out that Mr. Gallico was exposing burlesque and showing it up for being cheap and tawdry and nothing to it. If that were so, would that change your opinion, Doctor? A. There is no reason, for instance, why the article should not have been edited and some of the things deleted.

Q. Then it would change your opinion? A. If those objectionable things were deleted.

Q. With the passages and pictures in? A. No.

4890

Q. If you knew it was an article exposing burlesque, that wouldn't change your opinion in any way, would it? A. Well, it is like the story about the operation; the operation was a success but the patient died.

Q. It wouldn't change your opinion? A. It wouldn't change my opinion as to the unworthiness of this article.

Q. Therefore it is of no importance to you whatsoever if the article concludes with this paragraph, is it:

"I trust that I have faithfully exposed my argument; that



*Solomon H. Metz—for Post Office—Recross.*

if Broadway flesh-peddlers think they're putting on hot shows, they have another guess coming, and if guardians of the public morals are worried about me and the other guys becoming corrupted by those dull, imbecilic, puerile, gyrations over which they are currently exercised, they can quit worrying, because it just ain't so." A. It would change my opinion of the writer but not as to worthwhileness of the article.

4891

Q. It would still be indecent to you? A. It would be objectionable to me.

Q. It would still be indecent to you? A. The article?

Q. Yes, and the illustrations. A. The illustrations definitely so.

4892

Q. And the article? A. Yes.

Q. Now will you read paragraph 15 on page 77 of the November issue out loud?

Can't you read it out loud?

Mr. O'Brien: Now, don't try to browbeat the witness.

The Witness: I haven't read this article; I never said I read this article.

*By Mr. Bromley:*

4893

Q. Is this the one that you told the Board was indecent? A. I never said that George Jean Nathan's article was indecent; I never said it.

Q. And you don't say it now? A. I haven't read it.

Q. Read paragraph 15 out loud, will you? A. Now you want me to tell you whether the article is indecent in paragraph 15 by these four or five lines that you take out of this context.

*Solomon H. Metz—for Post Office—Recross.*

4894 Q. I want you to read it out loud. A. Suppose I don't want to read it out loud?

Q. I can't make you. A. You read it and I will tell you.

Q. You tell me. A. I am not here to read, I am here to testify:

Q. You won't read it out loud? A. ~~Not~~ the way you ask me.

Q. How would you read it out loud? A. I don't want to read it; I am not a professional reader.

Mr. O'Brien: I have an objection to this.

4895 The Witness: You read it and I will tell you how it sounds to me. You read it and then I will tell you how this article should be judged; just read it to me.

*By Mr. Bromley:*

Q. What shall I do? A. Just read it to me and I will tell you what it means to me.

Q. Fifteen? A. Yes.

4896 Q. "Any more plots about someone who mistakes an innocent institution for a bawdy house, or vice versa." Now, is that indecent? A. It is not enough, it conveys no meaning to me. You might as well take a whole phrase out of a sentence; it has no context.

Q. You couldn't possibly express an opinion as I read it to you out of its context, could you? A. Of course not.

Mr. Bromley: That is all.

The Witness: On this particular selection I couldn't.

*Solomon H. Metz—for Post Office—Redirect.**Redirect Examination by Mr. O'Brien:*

4897

Q. What do you think of this paragraph? I think it is an enumeration of characters, scenes, dialogue, and so forth, which Mr. Nathan said should be edited out of plays:

"Young floozie characters wearing short skirts that tightly embrace their hindparts and who interpret their roles by crossing their legs three inches above the knees and dangling red handbags big enough to hold the books of the Corn Exchange Bank." A. Definitely objectionable because this particular selection conveys a whole picture whereas this one conveys nothing, just words. You must realize the difference between a descriptive piece of writing and just expository.

4898

Q. I ask you a similar question with regard to Item No. 21 in the same article, reading: "Den don't gimme any a dat crap! What da hell did yuh tink I wuz gonna do? Hang around dis dump waitin' fer Santa Claus tuh take care a me, fer Chris' sake. Looka you! What a yuh got? Six years yuh went tuh college an' what da hell a yuh got? A lousy hand-out a thoity bucks a week! Not fer me! Yeah, I got mine, but I took it!" A. Well, I wouldn't be able to judge unless I know who this particular speech is addressed to. I don't know what to say about that.

Mr. O'Brien: That is all.

4899

Mr. Bromley: That is all.

(Witness excused.)

Chairman Myers: We will take a ten-minute recess.

(At this point a short recess was taken, after which the proceedings were resumed, as follows:)

Chairman Myers: Proceed, gentlemen.

*Chester W. Holmes—for Post Office—Direct.*

4900 **CHESTER W. HOLMES** a witness called by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien:*

Q. State your full name for the record, please? A. Chester W. Holmes.

Q. And you live in the District of Columbia, do you? A. No, I do not.

Q. Where do you live? A. Alexandria, Virginia.

4901 Q. Are you employed in the District of Columbia? A. I am.

Q. Will you state in what capacity? A. As Assistant Superintendent of Public Schools of the District of Columbia.

Q. And what particular part of the public schools do you devote your time to? A. Supervision of the Teachers College and senior high schools, the white schools.

Q. Dr. Holmes, would you tell the Board what educational degrees have been conferred upon you? A. I hold a Bachelor of Science degree, and Master of Education degree from Harvard, and Doctor of Education degree from George Washington University.

4902 Q. That Bachelor of Science degree was 1916. Is that correct? A. That is correct.

Q. And the other Harvard degree was 1924? A. That is correct.

Q. And the George Washington degree was 1936. Is that right? A. That is right.

Q. How long have you been superintendent of the senior high schools? A. Four years and a half.

Q. And before that what were you doing in the District school system? A. In 1928 I came here from Chicago to

*Chester W. Holmes—for Post Office—Direct.*

Langley Junior school, as principal, and then to the Anacostia School and then was placed in charge of vocational schools, junior high schools, and in 1935 came to my present position.

4903

Q. So you have been a teacher, a superintendent of junior high schools, and now superintendent of senior high schools, and Teachers College. Is that correct? A. Since 1928 in the District.

Q. Have you, Dr. Holmes, at my request, examined several issues of Esquire Magazine? A. I have.

Q. From January to November, 1943? A. I have.

Q. And have you formed any opinion as to what the effect of reading these magazines would be upon persons, boys or girls, of the age of the students over which you have supervision and with whom you come in contact? A. Yes. I don't believe it would be beneficial to them.

4904

Q. Do you believe it would be unbeneficial in any way? A. Yes, I believe it would be unbeneficial.

Q. Would you say whether or not you think it would have an effect upon their morals? A. I think it would.

Q. What effect? A. I think it would be harmful to their morals.

Q. Harmful to their morals? A. Yes.

Q. Would you say whether or not you consider the contents of these magazines as you have examined them, that is, the items that have been pointed out to you, decent or indecent? A. Indecent.

4905

Q. Do you consider these items, Dr. Holmes, to be what you would consider to be proper information of a public character for general distribution? A. No, not from the school point of view.

Mr. O'Brien: That is all.

*Chester W. Holmes—for Post Office—Cross.**Cross Examination by Mr. Bromley:*

4906

Q. When did you first see the magazines? A. I believe it was Friday of last week.

Q. How long did you spend looking at them? A. About two hours and a half.

Q. Did you examine the sports features of each of these? A. Not all of the sports features of each issue.

Q. Did you examine any one of them? A. Yes.

4907

Q. What was your opinion of the one you examined? A. I would have to know which one that was. I couldn't tell you what it was—whether it was in the October number or which particular number.

Q. Could you find it for me? A. Which one would you have in mind?

Q. I only want the one you looked at, Doctor. A. I may have looked at more than one. As I say, I didn't catalogue them. I looked over the entire group of magazines.

Q. Would you pick out the first sports feature in the first issue that you looked at? A. I would have to be handed the magazines.

4908

Q. They are right in front of you, sir. They are all in order. A. As I say, I don't know in which particular issue the sports numbers I looked at occurred. I looked through all the magazines and looked at the numbers that were marked.

Q. You concentrated your attention on the material specified on the slip of paper on the outside of each one of them. didn't you? A. That is what I concentrated on.

Q. I want to know if you have enough familiarity with the sports section of any of the issues to express an opinion about it. A. Not about the sports section, no.

Q. You couldn't do that? A. No.

Q. Do you know Major Griffith? A. No.



*Chester W. Holmes—for Post Office—Cross.*

Q. Clark Shaughnessy? A. Do you mean personally or by name? 490

Q. Personally first. A. I do not know either of them personally.

Q. Do you know Clark Shaughnessy? A. I believe Clark Shaughnessy was coach at the University of Maryland.

Q. Is he a man of high reputation in the sports field? A. I should say he was.

Q. Did you know he was now athletic commissioner of the Big Ten in the Middle West? A. No, I did not.

Q. His name is Griffith. A. I thought you were talking about Shaughnessy.

Q. I shifted all of a sudden to Griffith. A. I didn't know that. You didn't specify that you had shifted. 491

Q. I now specify I have shifted to Griffith. A. I know nothing about him.

Q. Did you examine the art features of any or all of the eleven issues? A. Yes, sir.

Q. Can you express an opinion about the art features of the eleven issues? A. By the art features, I take it you mean the Varga pictures.

Q. No, I mean the reproductions of works of art. A. I would have to have you specify more particularly and precisely what you mean by works of art. Which works of art?

Q. You do not now remember that there is an art section in each of these magazines? A. Not classified as art as such. 491

Q. You don't remember that? A. Not as art, no.

Q. Did you look at the covers of any one of these magazines? A. Yes.

Q. Did you notice that on the covers there was a department headed "Art"? A. I didn't read particularly along here, no, sir. I looked at the pictures and I looked at the date on it and turned inside.

*Chester W. Holmes—for Post Office—Cross.*

4912

Q. Did you look at the Table of Contents? A. Sometimes, not all of them.

Q. So, in the January issue you are not in a position to express your opinion as to the art of Covarrubias reproduced in that issue? A. I should have to see it first to see if I have seen it.

Q. Are the names Derso and Kelen familiar? A. No.

Q. Or Leydenfrost? A. No.

Q. Or the name Bohl? A. No.

Q. Or the name Pachner? A. I should want to see what you are alluding to. The names are unfamiliar as such.

4913

Q. Have you ever studied art or the history of art? A. Not as such.

Q. You are not an expert in the art field? A. No. I am not testifying as such.

Q. I show you this colored map in the January issue at page 47. Can you express an opinion as to that?

Mr. O'Brien: What opinion, as to whether it is pretty or not? I would like to know what kind of opinion counsel is asking for.

Mr. Bromley: Any opinion.

4914

The Witness: I would say that it would not be particularly helpful as an art exhibit for me, and I can't see where it would be very helpful to students.

I am testifying only in its relation to students, not personally.

*By Mr. Bromley:*

Q. Do you think that is an example of the contents of this magazine which you said would be unbeneficial to students? A. I would say it would be unbeneficial.

Q. Would you say it was harmful to their morals? A. Not that much, no.

*Chester W. Holmes—for Post Office—Cross.*

Q. Would you say it was indecent? A. Not that map, no.

Q. Did you look at these travel posters? A. Yes.

Q. Did you recognize them to be works of art? A. I certainly wouldn't call them works of art.

Q. Would you call them unbeneficial to students? A. Yes. I cannot see where there would be any benefit to students looking at those.

Q. Do you think they are harmful to morals? A. Not this particular set that you are showing me.

Q. Have you in mind some other particular set? A. No, not without seeing them. I wouldn't attempt to testify without seeing what I was discussing.

Q. Do you remember looking at the Leydenfrost painting on page 76? A. I remember that one.

Q. Would you consider that one— A. Yes, I think that could be considered art, from my point of view, anyway.

Q. Would that be beneficial or unbeneficial to students? A. I think that might be beneficial.

Q. Would you consider that information of a public character from the school point of view, sir? A. I think it could be, depending upon its use.

Q. Yes. Well, if it could be used for the benefit of students, then you would call it information of a public character? A. I would call this particular piece of art, yes.

Q. Did you make any analysis of that such as you and I have just done of these eleven issues? A. Yes. Some I thought all right, and some I did not.

Q. Would you mind pointing out one instance of art which you thought was not all right? A. Again, I can't tell you in which particular issue a particular picture would not be pleasing and what was. I would have to look through them there. I can't call the page and edition number.

Q. I shouldn't think you could. I wondered if you had anything in your mind as to the art content which you didn't

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*Chester W. Holmes—for Post Office—Cross.*

4918

think would be beneficial? A. I looked these through without regard to the subheadings and classifications.

Q. Did you read any of the articles? A. Yes.

Q. Which ones, do you remember? A. Those that were marked.

Q. Only those? A. I read some others. I can't recall the names now. This was almost a week ago, six days ago.

Q. How many articles other than those that were marked did you read, sir? A. I would think possibly from four to six. I didn't keep any record. As I went through and saw a title which attracted me I read it. But I was not reading them item by item.

4919

Q. Does that apply to the fiction too? A. Yes, that applies to the fiction. When I saw an article that attracted my attention I read it and if it did not I skipped it.

Q. Did you find anything that was interesting? A. I couldn't tell you in which particular issue because I was not thinking of its relation to this meeting because I didn't know I would be asked any such question.

Mr. Cargill: Will the witness speak so we can understand?

*By Mr. Bromley:*

4920

Q. Does this figure of four to six include the articles and the fiction stories as well? A. Yes.

Q. You read four to six of the articles and the fiction stories? A. Yes.

Q. Can you remember any one of the four to six articles or stories which you read which you found objectionable? A. I don't think I could recall them by title. I think I can find them rather quickly through some of these. As I recall, there was one in the later numbers, that is, towards the close of this year.

*Chester W. Holmes—for Post Office—Cross.*

Q. Could you find that for me? A. Yes, I think probably I could.

4921

Q. They are in order here so you won't have any trouble.  
A. Here is one here, at page 56; "Portrait Above The Fire Place."

Q. That is a piece of fiction? A. I think it is pretty cheap. I think it would be a let-down, to anybody who read it.

Q. You don't think it is very good literature? A. No, because I think literature is something more than the mere putting together of words pleasing to the ear or to the eye.

Q. What other article have you got in mind? A. Well, another one happens to be in this same one, page 104, "The Sporting Scene."

4922

Q. Do you recognize the author of that? A. Just by name. I recognize it looking at it now, that he is the author.

Q. You don't know who he is? A. No, sir.

Q. You don't recollect he is the man who wrote the sports section of the magazine? A. No, because, as I say, I didn't read the magazines with regard to sections. I looked through them just as one would thumb through casually.

Q. What do you teach in the public schools? A. Mine is an administrative position; I don't teach.

Q. You have never taught? A. Yes, not in Washington.

Q. What did you teach? A. English and foreign languages.

4923

Q. Are you an expert on literature? A. I do not so qualify.

Q. Did you think this second article was cheap, too? A. Yes, it doesn't appeal to me at all, and I can't see how it would appeal to the average person.

Q. Have you another article in this issue in mind? A. This one on page 30 of the August edition, "Many Wives Too Many".

*Chester W. Holmes—for Post Office—Cross.*

4924

Q. Did you read that? A. I read it.

Q. Did you think that was cheap? A. I thought it was pretty far-fetched and sort of uncalled for. It may be funny to some.

Q. Do you know Mr. Channing Pollock by reputation? A. I do.

Q. Would it surprise you to know that he testified here that that story that you said was cheap was one of the best stories he had ever read? A. No, it wouldn't surprise me.

4925

Q. People of intelligence might well differ with you, might they? A. Of course.

Q. Indeed, you would be prepared to admit that the majority of opinion might be that that story possessed literary excellence? A. Certainly. I am testifying simply as I review that for those in our public schools, and those in our teachers college. I am not giving my personal opinion at all.

Q. You wouldn't use this in your schools? A. No.

Q. Did you think this magazine was published for grade school or high school children? A. No. It simply might find its way in. There are a number of magazines we do have on our lists which are not published alone for schools but which we find useful in our instruction.

4926

Q. Is Life one of them? A. I haven't the list here but I believe it is not.

Q. Did you ever hear of William B. Ziff? A. No.

Q. Did you read in the January issue, "Thirty-one Lessons for Brass Hats and Bureaucrats"? A. I do not recall it as such. I would like to see it first.

Q. This is described as "Excerpts from 'The Coming Battle of Germany' which every American citizen should read," and it is on page 109. A. May I look at it a moment, please?



*Chester W. Holmes—for Post Office—Cross.*

Q. Yes, please. A. No, I did not read that.

4927

Q. From what you see of it now couldn't you well form an opinion that that would be most useful to students? A. From that cursory glance I should think so, but I would want to read it more thoroughly.

Q. Did you read Joseph Wechsberg's article on "School for Saboteurs"? A. I did not.

Q. That is an article by a refugee who says that, "Sabotage being the only weapon left to the people enslaved by the Nazis, they make the most of it."

You have no recollection about that at all, have you?

A. I have not.

4928

Q. Will you glance at it? That might well be of very considerable educational value, might it not? A. It could be.

Q. It could be? A. Yes.

Q. This article, "Japan's Mein Kampf," by Curt Riess, saying, "The Tanaka Memorial, given to the Emperor in 1927, contains plans for Jap conquest now under way." Did you look at that? A. I did not.

Q. It is on page 56. Would you glance at it for me, if you please, sir? That looks like a valuable article for educational use, doesn't it? A. It could be.

Q. Here is an article I notice by Robert W. Marks on "The Future of Air Power" at page 77. Did you read that? A. I did not.

4929

Q. Would you look at it, please? You would think that would be especially valuable, wouldn't you? A. Well, I would object to the use of "especially valuable." I think it could be valuable. It would depend on what use you would put that to. I think you should specify what use you would want me to put it to, whether for casual reading or for lectures in the field of social studies or the field of current events.

*Chester W. Holmes—for Post Office—Cross.*

4930 Q. I would suggest turning to the field of current events since this article suggests— A. I think it would be useful there.

Q. I notice an article by Thom Yates on "West Point's First Captain." Did you read that? A. No.

Q. That appears at page 58 and has to do, I believe, with the Generals Pershing, Lee, MacArthur, and Wainwright, all of whom were first captains at West Point Military Academy.

Will you look at it, please? A. Yes.

Q. It has to do with a matter of current interest, doesn't it? A. Yes, a matter of just general interest, however.

4931 Q. Do you know who George Jean Nathan is? A. Yes.

Q. What is your opinion of him? A. You are asking my professional opinion but not my personal opinion, because that is the only ground on which I care to testify for the schools. I don't feel my personal opinion is being sought here.

Q. Whichever you wish, sir. A. It is very hard to express exactly what one's opinion is about a person because there are both good and bad features. I would say in general he is all right.

4932 Q. Wouldn't you go a little further and say he is perhaps America's outstanding theatrical critic today? A. I don't say that I would say he is the outstanding one. I would say he is an outstanding one.

Q. Do you know William Lyon Phelps? A. I would have far less reservation about William Lyon Phelps than about George Jean Nathan.

Q. Do you know he appeared as a department head in each of these issues throughout October? A. I read that.

Q. You noticed that? A. Yes.

Q. You have no reservations about the value of his contributions, have you? A. No.

*Chester W. Holmes—for Post Office—Cross.*

Q. Did you notice that Mr. Nathan appeared in each of the eleven issues as the head of the theatrical department, always with an article of criticism of his own? A. I didn't notice that. I don't question your statement but I didn't notice that particular fact.

4933

Q. Did you find anything to object to in any of the Nathan pieces in any of the eleven issues? A. Well, I didn't study them with regard to whether I should object to anything that Nathan wrote. I would have to review, refresh my mind on each one of those, to be able to say. Asking me in this way, I couldn't say that I either did or did not. I would need to know just what he said in each one of them.

4934

Q. Well, do you remember at all anything that he wrote to which you took exception? A. No, neither do I remember those which I agreed with. I didn't read them with that in mind.

Q. Well, do you recollect one of the articles of his was specified on the slip of paper attached to each copy? A. No, I don't remember that. I would be glad to see the article to refresh my mind on it if it were.

Q. It is in the last one, the November issue, page 77 (handing the above-mentioned article to the witness). A. I remember that. I could not recall that until I looked it over.

4935

Q. Now having looked it over again, do I understand you to say that that article is harmful to morals? A. No, I wouldn't say the article is harmful to morals. I think that the discussion in it leaves something to be desired but there are parts in it I think should have been omitted.

Now, I want to emphasize that I am testifying with regard to students; I am not testifying with regard to adults. I think there are things in there that could have been omitted and no real harm done.

*Chester W. Holmes—for Post Office—Cross.*

4936

Q. That is, the omission of certain parts would not have done any harm? A. The omission of certain parts would not have done any harm to the original purport of the article.

Q. You don't really think, do you, Doctor, that Billy Phelps would regularly contribute to a questionable magazine? A. Now, of course, that is capable of various interpretations as to what is questionable there. He was probably contributing to one on an adult level, and articles on the adult level are not likely to be read by students. He was probably not writing for children of high school age or college age.

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Q. So that the fact that he regularly contributed to this magazine would lead you to believe that he considered it to be acceptable for adult use? A. Not necessarily; not necessarily. A person might write for a magazine for money without regard to the rest of the contents. His article may be perfectly fine but he may not be interested in what other connections it is used.

Q. You really think that Billy Phelps was that kind of man? A. No, but I am confident that his thoughts were writing for adults and not writing for high school students.

4938

Q. You express no opinion whatsoever as to whether this magazine is acceptable for adults? A. I would express no opinion on this magazine as to harmlessness nor wrongfulness to adults. I am testifying only as to its harmfulness to high school and teachers' college students. That is all I am doing in my testimony.

Q. Do you know Dr. Ernest Osborne, Professor of Education at Teachers College, Columbia? A. Surely.

Q. Do you know Dr. William Allen Neilson? A. I do; I know him by reputation.

Q. What is that reputation? A. Very high.

*Chester W. Holmes—for Post Office—Cross.*

Q. Do you know Mary Ellen Chase of Smith College?

A. I have heard of Mary Ellen Chase by reputation.

Q. What is that reputation? A. Very fine.

Q. Do you know Professor Gleason of Vassar? A. I do not.

Q. Do you know Professor Herbert B. Smith of the Francis W. Parker School in Chicago, Illinois? A. No.

Q. Do you know J. Halsey Gulick of the Gulick Camps in Maine? A. No. There are three or four Gulicks; I am not familiar with that one. There is a Walter Gulick, not that one.

Q. This Gulick to whom I refer is headmaster of Proctor Academy now? A. I don't know him.

Q. Would you say that the opinion of William Allen Neilson and Mary Ellen Chase as to this magazine was entitled to great respect and weight? A. Depending on the basis on which they rendered their opinion on it. If they were commenting on its use in high school, I would want to know what it was before I commented further. I said, as to its adult level I am not commenting on.

Q. What about your view of their opinion as to its effect upon college age youth? A. I would listen to that with respect, because I think they would know what they were talking about.

Q. Did you know that all the persons whose names I just read so testified personally or by stipulation? A. I did not.

Q. That this magazine was decent or respectable? A. I don't know anything about what they said about this magazine. I haven't heard one way or the other.

Q. Doctor, based on the analysis which you and I have just made, wouldn't you say that all of the eleven issues contain a large amount of information valuable to high school and college students? A. I wouldn't say a large

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*Chester W. Holmes—for Post Office—Cross.*

4942 amount, because I haven't weighed it. We have picked out at random articles and I would say that they contain some information of that nature, that is as far as I would care to go without weighing it further.

Q. Based on the analysis that you and I made of the January issue, wouldn't you say that you and I have pretty well demonstrated that the bulk of it was of such a character? A. No, because I don't know how many pages you quoted from. There were some left in there that I didn't see. I only know the parts that we discussed.

4943 Q. Did you know that the parts we discussed composed all the articles except one? A. No, I didn't know.

Q. Didn't you know it? A. No. I didn't read that with you; I just listened to your statement of the names and the contents.

Q. Did you ever hear of the author Manuel Komroff? A. No.

Q. I take it you didn't read his story "The Christmas Surrender"? A. I don't think so. I would have to refresh my mind on that. No, I didn't.

Q. Did you ever hear of the author, Louis Paul? A. No.

4944 Q. Did you read his story "Strictly Legitimate Deals"? A. I can not answer that without checking to refresh my mind. After all, reading through eleven of those it is not likely to make things stand out by name.

Q. Had you ever read this magazine before? A. I have read it occasionally, glanced through it but have not read it page by page.

Q. Looking over the titles of these seven stories, "Black Angel Reef," "Strangers Defeated," "Sixty-one Shopping Days till Love," "Rose into Cauliflower," "Testimonial to Hillel," and the two that I have mentioned here, are you able to form any opinion as to the character of those



*Chester W. Holmes—for Post Office—Cross.*

stories? A. Well, I wouldn't judge simply by the names; no, sir, because I think that would be a very unwise way to judge a story, simply by its name.

4945

Q. But you see there is a summary opposite. A. I will read the summary.

It would be hard to tell from this whether they were acceptable or not, just by looking at that; on the surface, they appear, shall I say, innocuous.

Q. Do you remember the double page spreads of Army camp jokes that appeared in these issues? A. Yes.

Q. Did you find them objectionable? A. Some; not all.

Q. By and large, would you say the great majority of those jokes were not objectionable from any possible standpoint? A. Well, I didn't count the number, so when you say the great majority, I don't know. I would say that some were and some were not, but I would not attempt to testify how many were and how many were not.

4946

Q. Didn't you notice on one two-page spread there were only two jokes to which objection was taken; to which even the Post Office Department objected? A. Yes.

Q. And there were 30 to 40 jokes in there altogether? A. Yes. On some pages there were that many jokes, I would say.

Q. Is it your opinion, Doctor, that it is harmful to the youth with whom you have had the greatest experience to print a joke such as this: ———

4947

"She: Would you like to see the place where I was operated on?"

"He: No, I hate hospitals." A. Oh, I think it is bad taste.

Q. Bad taste? A. Yes.

Q. You remember that was one of the jokes? A. For youngsters of high school age?

Q. Yes. A. Yes.

*Chester W. Holmes—for Post Office—Cross.*

4948 Q. Do you remember that that was one of the jokes?

A. I do.

Q. You wouldn't call that indecent, would you? A. I would say indelicate.

Q. Indelicate? A. Yes.

Q. Wouldn't you say that most of the Army jokes that were reprinted in this magazine from month to month, to which objections have been made, were indelicate rather than indecent? A. No, I think some were disgusting, indecent, but the others were indelicate.

4949 Q. Could you give us any approximation as to the proportion? A. I would say they were about evenly divided.

Q. About evenly divided? A. That is based on my quick recollection. I didn't keep any personal account of it.

Q. I know. So that, even from the point of view of the high school youth, you find only some of the material complained of to be objectionable? A. No, I would say the majority of that which is complained about is objectionable; the majority of it.

Q. As to the rest of it, you have no opinion at all except as you have expressed? A. Except as I have expressed it here. Remember, I did not read every article in there, as I have testified to.

4950 Q. You know, do you not, that the material complained of represents but a very small proportion of the total contents of the magazine? A. Well, that may be, but it only takes one rotten apple to spoil a barrel.

Q. Now, coming back to my question, you know, don't you, that the material complained of represents but a very small proportion of the total content of the magazine; isn't that so? A. That is right. Based on those pages, I would think that was correct.

Q. Doctor, here is an exhibit, 128. Would you look at it and tell me whether you have the same opinion of that as

*Chester W. Holmes—for Post Office—Redirect.*

you have of the material in Esquire which you condemned? A. I saw that. I think it is cheap. That was in last Sunday's Star.

Q. You think it is cheap? A. Surely. I read it.

Q. Well, now, is it any better or any worse than those pictures of camouflaged soldiers looking at girls in swimming? A. I have a notion that Bud Fisher may have gotten this from that.

Q. You therefore think that this comic strip is no better and no worse than the former? A. That particular strip is no better than that which you have just alluded to.

Q. Do you think that a comic strip like that really does have any harm to children? A. Yes, because I think it cheapens them. You know that we in our classes try to spend a great deal of time in, shall I say, raising their point of view in regard to literature, and anything that lowers it makes our work much more difficult to carry on.

Q. You say that even though the material which you criticize is just published for the purpose of getting a laugh? A. I say that for that very reason. I say that to get a laugh out of something cheap is cheap itself. It shows very poor taste on the part of the publisher.

Q. You have no hesitation in characterizing that kind of cheapness as indecent? A. No, I wouldn't characterize it that way. Just because a thing is cheap doesn't mean it is indecent. There are degrees of indecency.

Mr. Bromley: That is all.

*Redirect Examination by Mr. O'Brien:*

Q. Doctor Holmes, Mr. Bromley asked you a number of questions concerning articles or stories in various issues of Esquire here, other than those which you were shown

*Chester W. Holmes—for Post Office—Redirect.*

4954

and those which you read at your own option when you had the magazines for examination. By the way, how long did you have them? Did you have them in your possession?  
A. Yes, I did.

Q. And you made your examination without consultation with anyone? A. I did. I made it by myself.

Q. You made it by yourself? A. Yes.

4955

Q. These articles which he discussed with you, which you thought might have some educational value, for instance, these articles about brass hats, or whatever they were, what would you say if in presenting them to high school students they should be presented in this form, accompanied by these various and sundry jokes that you did not approve of, or these Varga girl pictures or cartoons?

A. No. That would be my objection to the total magazine, the fact that they came mixed that way. I think by themselves or under another cover or another editorial program, they would be probably accepted by the schools.

Mr. O'Brien: I have no further redirect.

Mr. Bromley: That is all.

Chairman Myers: That is all, Doctor.

(Witness excused.)

4956

Mr. O'Brien: Well, my witness walked out on me; I guess he didn't wait very long; so I can't go ahead. I have had three of them here.

Chairman Myers: Does that conclude all your witnesses?

Mr. O'Brien: No, I have listed for appearance here four other witnesses.

Chairman Myers: About seven altogether?

Mr. O'Brien: Yes. I had one man who caught a cold and couldn't be here.

*Colloquy.*

Chairman Myers: There is no way of getting any of them in this afternoon?

4957

Mr. O'Brien: No, sir. I told the others to be here tomorrow. I thought these two men would take up the rest of the afternoon. Of course, I cut my direct so short that it has created a hiatus.

Chairman Myers: Well, I suppose there is nothing to do but to go over until tomorrow. If we start at 9:30, do you suppose there is any chance of getting through tomorrow?

Mr. O'Brien: Well, I will try very hard but there is one witness tomorrow that I don't think I can get out of bed until Saturday.

4958

Chairman Myers: Who is he?

Mr. O'Brien: He is a very well educated psychiatrist and has been studying this thing for a week or more.

Chairman Myers: I was going to make a suggestion to both of you gentlemen, that this has been a very long drawn out hearing, and I don't know whether you can go ahead with your argument at the time when it is generally set, at the end of the hearing. It seems to me, if you can agree on how much time you would like to have, it would be better. Whatever time you gentlemen can agree upon would be satisfactory to the Board.

4959.

Mr. Bromley: Two hours apiece.

Chairman Myers: You want two hours apiece?

Mr. Bromley: Yes.

Chairman Myers: I rather figured that you would probably want a little time to get your thoughts together.

Mr. Bromley: That is what we would like to do.

*Colloquy.*

1960 Mr. Hassell: Two hours would certainly be enough for us.

Chairman Myers: There is no objection on your part to it?

Mr. Hassell: No, sir.

Chairman Myers: Then suppose we just figure it that way. Perhaps these hiatuses we are having here may help us because they will give you some time to put your thoughts together.

Mr. Bromley: Can't we persuade Mr. O'Brien to finish tomorrow, so we can sum up Saturday?

Chairman Myers: I would like to see if that could not be done, very much.

1961 Mr. O'Brien: Mr. O'Brien would like to do that, Mr. Bromley. Mr. O'Brien is not enjoying your company any more than you are enjoying his, but my witnesses unfortunately are sick or have some business to attend to, and I have tried very hard to shorten this thing, because it has been going a long time, and the Board has been inconvenienced, and I know Esquire has been here at its own expense, and all that, but still there are some men whom I feel the Board should have an opportunity of hearing. I will be as brief as I can on my direct examination, and as you observed it has not taken over 10 or 15 minutes in any case.

1962 Mr. Bromley: If you tell us who they are, we might stipulate as to them.

Mr. O'Brien: Well, I will think about it.

Mr. Bromley: Thank you.

Mr. O'Brien: But there are some men I would prefer not to stipulate. If it comes to a point of stipulation perhaps we can do that tomorrow.



*Colloquy.*

Mr. Bromley: Why can't we take them all up now?

4963

Mr. O'Brien: Because there are a few of them anyway that ought to be heard. There are some that we can probably stipulate.

Chairman Myers: Maybe you can agree on those you can stipulate with regard to their testimony and then take those you think ought to be heard. You might confer as to that.

Mr. Bromley: It is a terrible personal inconvenience to me to be kept in town over the week end when I have to start on Tuesday the 9th on an anti-trust case that is going to take the rest of the winter.

4964

Mr. O'Brien: Well, of course, most of the time has not been taken up by the Post Office Department. We finished our case on direct in half a day.

Chairman Myers: Suppose we adjourn until 9:30 in the morning. In the meantime maybe you gentlemen can get together on the stipulation.

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned until Friday, November 5, 1943, at 9:30 o'clock a. m.)

4965

# HEARING OF NOVEMBER 5, 1943.

4966

## PROCEEDINGS RESUMED.

Chairman Myers: Are you ready to go ahead?

Mr. O'Brien: Yes, sir; I am ready.

Chairman Myers: Suppose we go ahead.

Mr. O'Brien: Doctor Rustin.

JOHN W. RUSTIN, a witness called by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

4967

*Direct Examination by Mr. O'Brien:*

Q. State your full name for the record, please. A. John W. Rustin.

Q. You are a Doctor of Divinity? A. That is right.

Q. You live in Washington in the District of Columbia? A. Seven years.

Q. Seven years? A. Yes.

Q. You are the pastor of the Mt. Vernon Place Methodist Church? A. That is right.

4968

Q. Doctor Rustin, will you tell the Board where you received your degrees, what education you have had? A. I am a graduate of Emory College in Atlanta, Georgia. I have a Master's degree from Columbia University, New York, and I have my Doctor's degree from my alma mater in Emory College, Atlanta, Georgia.

Q. Besides being pastor of the Mt. Vernon Place Methodist Church, do you hold any other positions in Washington with any other organizations? A. I am a member of the arbitration committee of the War Labor Board. I am also a member of the Board of Education Advisory Committee

*John W. Rustin—for Post Office—Direct.*

to the juvenile delinquent problem in the city, and President of the Federation of Churches in Washington.

4969

Q. Do you have any connections with any other organizations, Doctor? A. I am one of the speakers for the Federated Council of Churches of Christ in America, speaking to universities and colleges across America.

Q. You visit these various colleges, do you, Doctor? A. Well, I have been in some thirty in the last two years, living for a period of from three to five days on the campuses.

Q. Now, what activity or interest do you have in the case of young people; on the part of young people in the community? A. Well, I suppose the very fact that I am on the Board of Education Advisory Committee for this juvenile delinquent problem would show that I have been selected as a Protestant minister for the District of Columbia because of my great interest, and in a recent article by J. Edgar Hoover, Mr. Hoover said that our church was doing more than any other church he knew of to work in the field of juvenile delinquency.

4970

We have had for the last two years over 300 of these dirty, ragged urchins off the streets of Washington in our church Saturday night to a picture show. We also have on Saturday night something like 100 of our young people bowling in the Lafayette bowling alleys.

4971

We also have our whole social hall turned over to newcomers and soldiers, servicemen, on Saturday night, so I imagine my whole emphasis has been on the liberal side, on the positive side, rather than the negative side of religion.

Q. In other words, you try to build up the moral structure of youth. Is that your statement, Doctor? A. I hate to keep talking about it because it sounds like you are an

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4972 egotistical jackass or something, but I think I would be considered that.

Q. Doctor Rustin, I want to show you the January, 1943, issue of Esquire magazine, and call your attention first to pages 97 to 108, containing several pictures.

Will you please examine those? A. What would you want?

Q. I want to know, Doctor Rustin, what your opinion of these pictures is as to whether or not they would have any effect upon the minds of the readers to produce decent or indecent or other kinds of reactions or thoughts. A. I think there is some difference in them. I rather think that one is rather suggestive (indicating).

4973

Q. You mean the top one. That is the February Varga girl. A. I also think that June—

Q. You think June is suggestive too, Doctor. Is that your answer? A. Yes, I think so. A rather thin line of demarcation, maybe, but the others are not so bad.

Mr. Bromley: Those are all out of the January issue, just for the record.

Mr. O'Brien: That is right.

*By Mr. O'Brien:*

4974

Q. What do you think of the August picture, Doctor Rustin, and the September picture in the same book? A. Well, August is not so good either. September is not quite as bad as far as I am concerned.

I say again, I don't know where you draw the line. I still would say the June and February ones, so far as I am concerned, would be the most objectionable.

Q. Do you think that these pictures that you have seen,

*John W. Rustin—for Post Office—Direct.*

Doctor, would constitute information of a public character proper for dissemination amongst the children or the young people, the adults, with whom you come in contact? A. I think so. I wouldn't want my 15 year old daughter to see these, for instance. I would rather for her not to.

4975

Q. You think they are not information of a public character? A. I'd certainly say that, yes. I would rather not have them accessible to my own daughter.

Q. Turn to page 45, Doctor. There is a picture on page 45, and a verse beginning:

"Men, sleeping beside your wives. Awake!

Awake, to gaze longingly, lastingly

Upon soft-skinned thigh and softer breast  
revealed by careless gown."

4976

Will you read that poem, please? A. I wouldn't object to that. I mean, there may be more good than there is harm in an article or poem like that. I don't know. I just wouldn't question it.

Q. Will you turn to page 137, Doctor? A. This same one?

Q. The same issue, showing two men looking through a skylight with the caption: "And to think I gave up drawing". A. My personal reaction to that is this, that that would have great harm with soldiers because I think it is suggestive and I think we need a little bit of suggestive literature that is going to fall in the hands of soldiers as possible, having been in the last war myself I think we are not going to need to throw temptations in their way.

4977

I don't know whether this would do any good or not. I also happen to believe in the positive thing. The other day I ran into this thing; that happens to be attractive (ex-

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4978

hibiting), so whatever the soldier gets at Christmas time I am going to have him get that.

I have 350 of my boys in the service, which is about one-tenth of my congregation. The reason I am going to send that is because I think he is going to need something like that to counteract a lot of things that are coming into their hands. I don't know whether this would do any good or not.

Q. This is a picture of Christ with a prayer? A. That is right.

Q. Is that the item to which you referred? A. Yes.

4979

Q. Do you mind if I show it to the Board? A. No, not at all. It is just something that we are advertising at the Federation of Churches right now, because we think this is kind of a positive thing rather than a negative thing.

I would like to emphasize the fact that I happen to be one of those who never believes that you are going to accomplish very much through negotiations. I always believed that you have to have counter reactions by positive things.

I think that is something that a boy is going to put into his pocket and pull out now and then. While it is going to cost us a hundred dollars to do it. I don't know if the Post Office is going to help us mail it; especially since we write them every week 350 letters and it is costing us a bit of money. Maybe I will get a little help down here.

4980

Mr. Bromley: You should have made a deal with O'Brien before coming up here.

The Witness: Yes, I should. I don't know why I didn't.

Mr. O'Brien: Mr. O'Brien would be delighted to help you, I assure you, as any other man would.



*John W. Rustin—for Post Office—Direct.*

*By Mr. O'Brien:*

4981

Q. Now, Doctor, let me hand you the February issue of this magazine and direct your attention to the folded picture at page 34.

Page 34 is a folded picture of a Varga girl. A. Yes.

Q. May I unfold it for you? A. My frank appraisal would be that again in the hands of young soldiers, they are tempted enough anyway. I am not sure that this is good, I would rather say that I personally would be against it.

Q. You think it might— A. It is a very attractive picture, not nearly as crude as the other pictures I selected in the other group. I think there is a difference when a picture is beautiful and lovely and can appeal to one's appreciation of beauty, but when it is just out and out vulgar, then there is a very different situation.

4982

This is not nearly as vulgar as the two pictures I called your attention to, February and June, in the other magazine.

Q. Will you turn to page 65? That is a hard page to find. It is not numbered. A. Here it is. Well, that is more the vulgar type that I am talking about.

Q. What is your opinion as to whether this is— A. I would be definitely opposed to this.

4983

Q. As an indecent picture? A. Yes. In other words, I think there is a line there. I don't know how I would draw the line, but I would certainly draw it, between vulgarity, vulgar display, and simply an artistic display.

Q. Will you turn to page 77, please, at the bottom of the page, the picture showing a couple by the bed undressing and two women and a man looking on? A. Yes, that is again decidedly, perhaps, the worst one I have seen. I don't like that at all.

*John W. Rustin—for Post Office—Direct.*

4984

Q. Do you think that is an indecent portrayal, Doctor?

A. That is the kind of thing that I happen to be—I feel that is just vulgar and nothing is accomplished by something like that.

Q. Now, will you turn to page 95, Doctor, at the top of page 95—it begins at the bottom of the second column from the right:

4985

“There is a new secretary in the union hall who isn’t used to sailors or their language. It seems Showboat went up to her when she was alone in her office, bent over her shoulders—loop-legged drunk—and rasped, in his peculiarly hoarse and penetrating voice, ‘How’s chances to lower the boom on you, sister?’ The girl jumped up in terror and ran screaming from the room. ‘Oh, that man! That man!’, she cried. ‘Help! He wants to do something terrible to me.’ It took quite a few people to calm her down and convince her that this is only Showboat Quinn’s way of asking, ‘How about lending me two bucks for a cup of whiskey, lady?’”

What do you think of that anecdote, Doctor? A. Well, I think it is a pretty crude way to ask for two bucks for a cup of whiskey.

Q. What do you think of the expression “How’s chances of lowering the boom on you, sister?”? A. That’s the crude part of it and I think rather vulgar.

4986

Q. Do you think it is indecent? A. Well, I suppose I would.

Q. If one of your parishioners voiced that expression to a girl in such circumstances in your parish, what would be your reaction? A. Well, I wouldn’t like it.

Q. Why? A. Because I do think it is vulgar.

Q. And indecent? A. And indecent, yes.

Q. On the same page, Doctor, in the first column, just about the center of it is a paragraph beginning:

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"I take the deck at a union meeting," he says, "and I start lambasting them. I peg them for the phonies they are. Everything is copasettic till I get back alone in my hotel room. Then four of the ISU goons come in. They kicked my teeth in and they kicked three of my ribs to smithereens. I crawled to the window and busted the glass. I grabbed a piece of the broken glass and I yelled, 'The first sonovabitch that moves I'll cut his head off.'" They left the room—but I went to the hospital."

4987

What do you think of the expression "sonovabitch" in that paragraph, Doctor? A. Being a Southerner, I would oppose it.

4988

Q. Do you think it is information of a public character to use that in a magazine? A. It happens to be fighting words down where I grew up. I don't think it is. I would call it indecent.

Q. Doctor, let me show you the March issue of Esquire and call your attention to some items in it.

The first item, Doctor, is on page 9. It is an advertisement of Thorne Smith's three wittiest, most ribald novels.

I call your attention to the description of this material under the caption: "America's one and only Rabelaisian humorist", and also to the pen and ink drawing in the left hand column showing a man and a woman on a bathing beach.

4989

Would you examine that page? A. I would call that indecent. I would like to see which one I refer to. I refer to this part down here especially (indicating).

Mr. Bromley: Meaning the lower left-hand column?

The Witness: Lower left-hand column. I mean this thing here especially and also that (indicating).

*John W. Rustin—for Post Office—Direct.*

*By Mr. O'Brien:*

4990

Q. On page 36, Doctor, is another picture of a Varga girl. A. I have already looked at that. I am not so much against that. I don't think it is—of course, it is an overdisplay of legs.

Q. How about the breasts? A. Well, that too.

Q. And the buttocks? A. You see so much of that in other places that I don't have to go to Esquire to see it.

Q. You think it is proper to display it in public, Doctor?

A. No, I am not for it.

4991

Q. You think in a man's magazine, you note the cover says: "Magazine for men", that this would be conducive of morality? A. Well, frankly, all these things go back to the fact that we are desperately trying to counteract some of this through the kind of literature we are sending to boys. Our church sends "Backstage", which is the first religious, church religious, theatrical group. I think it has been written up in the outstanding Little Theatre Guild because it is the type of thing we are doing, so once a month we send all the happenings in about 15 pages in Backstage.

4992

We put on four major productions a year and here in Washington you have to put on a fairly decent play to draw people. We packed the church five nights in succession and then we send the account of that to our boys, who many of them were in the plays in the last seven years, so we are really sending about five different publications that we issue ourselves to the boys that are all over the world, and frankly I would rather for them not to see that kind of picture.

Q. Will you turn to page 49, Doctor, that is a Sultan cartoon in the same issue. A. Well, that is that same type that is easy to brand. So far as I am concerned I think it

*John W. Rustin—for Post Office—Direct.*

is indecent; that is the one I happened to refer to, this type here (indicating).

4993

Q. Will you turn to page 107, Doctor, please? A. I would not object to that as strenuously and maybe I would not even call it indecent. I don't know, I don't like it, but I wouldn't have the same feeling that I would against the one I just looked at on page 49 or whatever it is.

Q. Do you think this is good material to send to soldiers, Doctor? A. No, I wouldn't recommend it, I certainly would not send it. I think there is some difference in that and that type of thing (indicating).

Q. I call your attention to the April issue of the magazine, page 38, picture of the Varga girl. A. It is a beautiful picture and would have been just as effective if they just hadn't opened up the girl's waist to show her breast. I think it would have been much more attractive in every way. I mean there is a deliberate effort there to show more than you would normally expect.

4994

Q. Do you think that is indecent, Doctor, to do that? A. I don't know whether I would call it indecent or not. I just don't like it; that is not as indecent as some of the other things.

Q. Do you think it is objectionable? A. I think it is objectionable, yes.

4995

Q. I call your attention to the May issue, Doctor, on page 32 and the caption: "The Savage Beast In Us", and there are several pictures. A. Well, that is the vulgar type of things I was talking about. I would call it indecent. I would brand that, so far as I am concerned, as indecent. It is a different thing, pure vulgarity.

Q. You haven't had an opportunity to read the article at all, have you? A. No, not this one. I was reading an article this morning, I don't even know which issue it was,

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4996

but it is the kind of thing that I thought was indecent. It had to do with girls, lost women being in court.

Q. That was in the previous issue. That is in the April issue, "The Court of Lost Ladies". A. Yes.

Q. On page 60. Would you look at that, Doctor. Take your time, and tell the court what you think about it. A. That part at the top of page 61 where:

"I asked her after we got there if this was the place where we were going to have the good time. She said: 'Yes, darling.' She then pulled off her dress and otherwise divested herself. I asked her if I ought to pay her first."

4997

I think it is indecent.

Q. You don't think that would contribute to the public morals? A. I think it is indecent.

Q. You have, I think, the May issue at your hand. We were talking about that a moment ago. Another picture on pages 37 and 38, this being a large picture of the Varga girl. "A little girl grows up" is the caption. A. I wouldn't brand that as indecent. I want to be sure that I make a line in my own mind as to what I call indecent. I think it is hard to do. I don't especially approve of this but I just wouldn't brand it as indecent.

4998

Q. Does the fact that it will be sent to soldiers in a man's magazine have anything to do with your opinion? A. I would rather they wouldn't have it. Some things are, I think, indecent, and others are more suggestive but I wouldn't call them indecent.

Q. When you use the word "suggestive" do you mean sexually suggestive? A. Yes.

Q. Now, will you turn to pages 86 and 87? A. I was going to say that on pages 86 and 87, that series of pictures—part of it, I would call indecent, just plain indecent.



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For instance, the statement, "A time when women can become pregnant by taking an electric shock." I think there is a lot of difference in a statement like that and any picture that might be suggestive.

4999

Mr. Bromley: Don't you know, Doctor, that you started in the middle of a sentence?

The Witness: Yes, but I read the whole thing.

Mr. Bromley: You didn't read the whole sentence.

The Witness: I read there (indicating). But I am talking about—if you want to be technical, I will tell you, that happens to be one of the articles I have read, and I just don't like pages 86 and 87.

5000

*By Mr. O'Brien:*

Q. Will you turn to page 93, please? A. I imagine you are much more familiar with this than I am, so I wasn't trying to give information to the Court.

Q. I think you are correct about that. We have seen it so often. A. I imagine you are rather fed up on it, and let me get through as quickly as I can because I am leaving town in the morning.

Q. I am trying to do that, Doctor. A. All right.

Q. Will you turn to page 93? There is a picture on one page and on page 93 is a caption, "Broadway for the Boys. The juke joint scene from The Eve of St. Mark."

5001

The text reads: "These soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 percent don't, 20 percent do, and 60 percent might."

Do you have any doubt what that "do," "don't," and "might" refers to, Doctor? A. I don't think there is any

*John W. Rustin—for Post Office—Direct.*

5002

question in anyone's mind unless they are kind of feeble-minded.

Q. And that refers to something sexual? A. I don't think there is any question. I think the very words before it, "the hygiene lecture"—

Q. Do you think this matter is proper to circulate to boys in the Army or to anyone? A. I don't like it. I think it is rather indecent—not nearly as bad as some of it, neither the picture nor the statement.

5003

Q. Have you any opinion as to the picture accompanying this text? A. No. I don't especially like the girl sitting on the soldier's or the boy's lap in that fashion, but since that is done in polite society I don't suppose I can say much about it.

Q. Do you think that the fact that the girl sitting on the boy's lap, apparently with drinks in their hands while this is going on— A. I think it makes the words a little bit worse and I don't approve of the words there.

Q. Page 34, Doctor, of the June issue, another Varga girl. A. Well, that is more indecent as far as I am concerned because it is apparently a definite part of the artist's mind to give a rather bolder display of that particular woman's breast rather than anything else.

5004

Q. Now, Doctor, in the same issue, just one more item on page 134 entitled, "Libel suits were as wine to that hell-firin' editor of the old West, Dave Day."

I call your attention especially to the left-hand column, at the bottom, the verse labeled, "An epitaph." It reads:

"Here lies the body of poor old Charlotte.

Born a virgin, died a harlot.

For eighteen years she kept her virginity,

An all-time record in this vicinity."

*John W. Rustin—for Post Office—Cross.*

What is your opinion of that, Doctor? A. Well, I would say this, that it is the thing that Mr. Hoover has been saying is causing—that is, part of the responsibility lies here in this kind of thing—that in 1942 there was an increase of 102 percent in sex arrests of girls under 21 years of age, and the first six months of this year is 98 percent over the first six months of last year. That is a thing that is concerning us on the Board of Education Advisory Committee here. We are up against something here which the Police Court says, they can't handle, so many prostitutes; they don't know what to do with the 13-, 14-, and 15-year-old girls; so some of us are deeply concerned with what has to be done with the morals of the young girls, and I think that statement here, that it is an unusual thing for a girl to keep her virginity before she is 18 years of age, why, we don't need it expressed right like that.

5005

Q. No, sir. The July issue, Doctor? A. I think I have testified enough. I already have been here 25 minutes and I imagine the other side wants to say something to me.

5006

Mr. O'Brien: If that is the way your time is limited, Doctor, I won't go ahead with direct examination.

The Witness: You know I told you I had an hour when I came in here. I have to leave town tomorrow and any man knows when he leaves town for a week there are lots of things you have to do.

5007

*Cross Examination by Mr. Bromley:*

Q. Coming back to page 134 of the June issue, did you read that article entitled, "Libel suits were as wine"? A. No, I read from here down through that "eighteen years she kept her virginity." I read the first part.

*John W. Rustin—for Post Office—Cross.*

5008

Q. The first column? A. "Two weddings are on dit for next week. This weather kind of suggests two in a bed spoon fashion," which is along the same line that I think is rather bad.

Q. Now, did you know that that article described what that old-time editor used to publish in his paper? A. Yes.

Q. You knew that? A. Yes.

Q. And you realized that? A. Yes.

Q. And you know this verse about virginity is an epitaph? A. Yes. It goes back a long time, instead of being modern.

Q. It is very bad? A. Yes.

5009

Q. Then you object, do you, to the repetition of an epitaph in a factual article? You think anybody could— A. Yes, that kind, 'because I don't think there is anything in the world to it but suggestive, of a suggestive nature.

Q. It seems to me to be purely factual and therefore justifiable. A. I don't think so. I think you can have anything that is not factual or anything factual, that if it suggests something, even in the modern time here today for a girl, you wouldn't want your girl to read; I wouldn't. That is what I am going to judge these things by.

Q. Therefore, you say— A. My daughter is not one of those prudes, either.

5010

Q. Therefore you would think it corrupting to use the word "prostitute" in print? A. No.

Q. You wouldn't? A. No.

Q. That is all right, you say? A. Yes. It is according to where you are putting it out. I wouldn't just throw it out in a magazine that is going to go to children or girls, but if you are going to have to use the word "prostitute" in order to give information where you are giving information, I would say it is correct.

Q. Did you consider, Doctor, the article, "The Court of

*John W. Rustin—for Post Office—Cross.*

Lost Ladies," to be highly informative and a factual article of vice conditions as reflected in the New York night court?

5011

A. Yes, sir. That is the reason I wasn't so sure that it was altogether bad. It couldn't have been included as being altogether bad.

Q. We have had testimony here that it was an excellent article and one that ought to be widely circulated. A. That is the reason I say it is not altogether bad.

Q. You wouldn't be willing to agree that the wide circulation in pamphlet form to young people of that kind of an article might have a healthy prophylactic effect because it shows the end of the road of ruin and disgrace and disease?

5012

A. No, I would much rather put on the thing we are doing at the present time, the school of Christian living, which we are teaching with the best authorities, of courtship and marriage, and I know that the thing I do for every couple I marry is to give them a copy of "Sex Harmony in the Home," which I think is the best information that can be given, rather than that sort of thing.

Q. It wouldn't surprise you to know that another clergyman from that stand has suggested that it ought to be put in pamphlet form and circulated? A. I am only expressing my own views here.

Q. I say, it would not surprise you? A. No, it would not surprise me. I wouldn't be surprised, no; anything that anyone would do. I wouldn't be surprised at. I am president of the Federation of Churches, but I wouldn't be surprised at any one of the 180 people, the things they do. I just happen to preside over the meetings.

5013

Q. This costume in the Varga girl-picture, that the Varga girl has on in the June issue, you recognize as a straight ballet costume? A. I am not too familiar with the ballet.

Q. Have you ever gone to the ballet? A. Not for a long time, back twenty years I used to go.



*John W. Rustin—for Post Office—Cross.*

5014

Q. You recognize the slippers as being dancing slippers?  
A. It looks like it.

Q. You recognize the costume as an ordinary ballet costume, Doctor? A. That is the reason I am not opposed to it as some of the others. I do not stress it. If you want my opinion of the two pictures I objected to, they are February and June of the January issue of Esquire.

Q. I just wanted to bring out the fact that you have no serious objection to the ballet costume. A. No, I don't.

5015

Q. You don't? A. I am just trying to save your strength and time, having to ask me those questions, by telling you there is a line of demarcation between love and beauty and the showing of it, even for legs and breasts.

Q. So it would be fair to say, sir, summing it all up, that the only two Varga girls out of the group that you have any objection to are the two in the January issue that you mentioned? A. The two that I would seriously object to, I would say so, yes.

5016

Q. Now coming to page 93, still in the June issue, you would be willing to admit, wouldn't you, that soldiers do discuss such things as sex? A. Not only soldiers but every college campus I go on, I sit down in a fraternity house and that is the primary subject that is brought up. I think they are seeking for the kind of guidance, and it is rather an interesting thing to find out, if you are frank and candid in talking with them, that they want some help rather than something to tear them down, however.

Q. I meant to refer to page 92 of the May issue, which has the picture, Doctor. A. Yes.

Q. Do you realize, sir, that that picture is a picture from an actual Broadway play? A. No, of course I didn't know that.

Q. Did you ever hear of Maxwell Anderson? A. Yes. Poetic drama, "Valley Forge."



*John W. Rustin—for Post Office—Cross.*

Q. He is one of our finest playwrights? A. Yes, that is right.

5017

Q. Did you know that that picture was from his current play, "The Eve of St. Mark"? A. Well, if you will notice that I testified that I wasn't against the picture so much. I just said it was built up to this suggestive thing, over to the right (indicating).

Q. I was just calling your attention to something I think that you may have overlooked. A. I didn't know that this was an actual picture.

Q. It is. Did you see "The Eve of St. Mark"? A. No, I didn't.

5018

Q. Did you know by reputation that it is one of the finest plays produced during this present war? A. I knew it had a fine reputation.

Q. Did you know that the words to which you objected, in the boxed-in portion, were actual quotations from lines uttered every night on the stage? A. Well, it very clearly says so.

Q. Do you know, sir, that those soldiers sitting with those girls have just come from a hygiene lecture, that they had resisted temptation and went back to the barracks and had nothing to do with them, and that is why it was such a moving scene in the play? A. I did not.

5019

Q. Now, knowing that, wouldn't you want to revise your opinion that that quotation from that splendid play, together with that picture, was decent? A. No, I don't know that I would, because you pull it out here and you arrange it in a boxed way and put it into something, then I just have an idea that many soldiers would do as I would, looking at this, would come to the conclusion that this was the thing that they would read about, and that picture.

Now, if they knew all this that you are talking about, I

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5020

wouldn't object to it, because I have no objection—I tried to point out I have no objection to anything that in the end is constructive, but when you sit, for instance, as those of us spending a great deal of time, by sitting here in the District of Columbia, and charged with the responsibility of trying to know how to help the Board of Education in this tremendous problem we have got of this increase in juvenile delinquency, and especially with girls 13, 14, and 15 years of age who are caught up with the glamour of these boys in uniform, I guess that is all I am concerned with: I am not even against your magazine, I am not against anything except when it comes to things that are indecent, I just think we better stop it.

5021

Q. I understand your position and I sympathize with you, but what amazes me is that you can apply a term such as "indecent," which would properly be used to describe a Parisian postal card, to a picture from a beautiful play and a quotation from the text. A. I didn't call that indecent.

Q. The text, coupled with the picture from the actual play; it amazes me. A. That is the reason I want to stop at some things I do call indecent. I think there are some pages I have seen that are very indecent.

Q. Now, do you think this page is indecent? A. No, I don't.

5022

Q. You used the word "indecent". A. I don't think I used the word "indecent" covering that one.

Q. If you did, you didn't mean to? A. No. That is the reason I kept saying there was a line I would like to draw. That is why I wouldn't describe one as being indecent when I didn't think so.

Q. In May, at page 32, in this article: "The Savage Beast In Us", you didn't read that article, did you? A. No, not all of it.

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Q. And you didn't realize that Mr. Gallico was fulminating against burlesque, did you? A. I wouldn't say that I didn't know it, because it was one of the articles that I had not read all the way through, because I didn't—I didn't want to take that much time. 5023

Q. I know. A. But I did look at it and scanned this particular article.

Q. Did you read the last paragraph of it? A. Yes, just now. It is a good article, a good statement, a good paragraph.

Q. You hadn't read that before, sir? A. No, but I still just don't think there is any excuse in just throwing this kind of thing before the public. 5024

Q. Even though it is a dissertation against it? A. Even though it is a dissertation against it.

Q. You believe that the best way to control that is by a conspiracy of silence? A. No, I don't. I think I have already shown that. You don't put on courses on courtship and marriage with the best experts, if you think you are going to keep things in silence, do you?

Q. Isn't your position again more properly to be that you object to this type of treatment? A. No, I wouldn't say it. I just object to those pictures. I think they are altogether indecent to be thrown on the pages of the magazine, any magazine. 5025

Q. Now, your objection is just to the pictures then? A. The pictures more than anything else. I haven't read the article close enough to know whether I would agree with it or not. I am talking about this (indicating to Board).

Q. Now, come to the article in April at page 60. "The Court of Lost Ladies" at page 61. You pointed out a sentence: "Is this the place where we are going to have a good time". Is that right? A. Yes. It begins: "A sad voiced policeman."

*John W. Rustin—for Post Office—Cross.*

5026

Q. Did you realize when you read that that the article was quoting from the sworn testimony of a policeman who had arrested a girl? A. I had an idea that is what it was.

Q. And you object to that kind of reporting in an exposure of the degree of prostitution that is present today in our night courts? A. I just simply object to that kind of thing coming out in the type of magazine that just goes to the readers, to the boys in service. I keep thinking of those boys because I feel such a sense of responsibility to them right now.

5027

Q. Now, in the March issue, the Sultan cartoon at page 49, just what is it that you think is indecent about that picture? A. Well, I would say that the costume that the girl has on—she might just as well be practically nude—plus the fact that here is a soldier away from home who is delighted over having a girl or one of the wives, apparently, of the Sultan sent to him on his birthday.

Q. You didn't catch the point of the cartoon that the girl was destined for another Sultan and the fatuous soldier thought— A. He thought, "Gee, what a break for me."

Q. That is where the humor lies? A. Yes.

Q. You didn't think this cartoon advocated any course of conduct or sale or barter or exchange of women, did you?

5028

A. I had an idea he was delighted because he was receiving the girl. But I still say that is an indecent picture so far as I am concerned.

Q. Is that because of lack of clothing on the girl chiefly?

A. Chiefly, yes. I would have to add the suggestion that is there that the soldier thinks he has got this rather nude woman that he is going to have the privilege of having. I think that is there too.

Q. Now, on page 9, the advertisement. Haven't you seen advertisements like that in many magazines? A. Well, I can't say that I have. I would not be surprised if they

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should be in other magazines. I wouldn't like it, I wouldn't care what magazine it was in.

5029

Q. I was trying to find out if you didn't know it was a common ad. A. I imagine it is.

Q. Do you realize who is advertising those books? Did you look at that? A. No.

Q. Did you realize it was the Literary Guild? A. No.

Q. Do you know what the Literary Guild is? A. I was reading that the Literary Guild membership was free and you save fifty per cent or more on the books. But, so far as I am concerned, this ad is altogether unfamiliar to me.

Q. Again, you feel it is objectionable? A. I would object to it, yes.

5030

Q. And that is as far as you go, do you? A. That is right. Far be it from me to come down here as an expert on anything. I am not here for that purpose. I just happened to be one of those who is deeply concerned for the welfare of juveniles right now because I am charged with that responsibility for the District of Columbia and also because I have 350 boys in the service from my church.

Q. Now, in the February issue, the article "The Unsinkable Sailor", you didn't read that in its entirety, did you? A. I don't think I read any of them in their entirety.

Q. Wouldn't you say that there were situations in published articles or stories where due to the setting and the type of person described, the use of the word "son-of-a-bitch" was justifiable? A. Oh, I have been to some of the shows on Broadway where they use expressions like that, but I always had a feeling that you kind of flinched from it. I don't know that you should publish it in a magazine.

5031

Again, that is not something that I would have picked up.

Q. You would not have objected to it if left to your own devices?



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5032

Mr. O'Brien: I object to the question of "left to your own devices". It implies something—

Mr. Bromley: What I meant was, unless it was called to his own attention.

The Witness: I suppose you know I am not trying to testify on behalf of anything. I am not here for you or Esquire or anyone else.

*By Mr. Bromley:*

Q. I know that. A. I don't like the word.

5033

Q. That is as strong as you would put your condemnation on it? You just don't like it? A. I just don't like it. That's pretty strong for me because I don't rave and rant.

Q. That is all you mean to say about it. You just don't like it? A. I just don't like it.

Q. Is that your opinion of the other part of the article to which your attention was called, about the boom? A. Which is that?

5034

Q. This article, up here, the phrase that means "Lend me two bucks for a cup of whiskey". A. I think that is a different thing. That other has to do with a term that most of us are big enough to know is used. "Son-of-a-bitch"—you don't like it, but it doesn't have to do with sex and morals as much as "lowering the boom" as used there. I don't think there is any question but that anyone would think that was a sexual proposition. That is the way I read the article.

Q. Does it make any difference to you that the meaning of the term is explained in the very paragraph in which it is used? A. I didn't like that. I thought that was a poor excuse for the way a sailor was going to borrow two dollars for a cup of whiskey.

Q. You were in the last war, were you? A. Yes.



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Q. In the Army or the Navy? A. Army.

Q. So you wouldn't know that was a common phrase in marine circles? A. I have heard it a good deal. I imagine most of us would know.

5035

Q. Don't you know that is the way a sailor says: "Let me put the touch on you for a couple of dollars"? A. I don't think anyone would read that article and think that.

Q. Not even with the explanation? A. It would have to be a sailor. Some things I do know. But as I read that article just as an intelligent person—I hope—reading an article, I would certainly think that had something to do with sex.

5036

Q. Having been a sailor myself and having been in the Navy in the last war, I still am confirmed in my opinion that soldiers just don't understand us. A. I expect that's right, but maybe we could turn around and say the same about you.

Q. I am afraid you have demonstrated that. A. We wouldn't quarrel over the little difference in this particular article.

Mr. Bromley: That's all.

Mr. O'Brien: That's all.

Chairman Myers: We will take a short recess.

5037

(Witness excused.) ●

(Whereupon, a brief recess was taken.)

Mr. O'Brien: Mrs. Wiley.

*Mrs. Harvey W. Wiley—for Post Office—Direct.*

5038 MRS. HARVEY W. WILEY a witness called by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien:*

Q. Will you state your full name for the record, please?

A. My name is Mrs. Harvey W. Wiley, W-i-l-e-y.

Q. You live in Washington, D. C.? A. Yes.

Q. Are you related to Dr. Harvey Wiley? You are his widow, are you not? A. I am his widow.

5039 Q. Will you tell the Board what organizations you are now connected with or represent? A. I am speaking as an individual, but I am the chairman of the legislation of the General Federation of Women's Clubs, about 2,500,000 women.

We have eight departments of work, one is the American Home, which is devoted exclusively to the uplift of the home. My job is to contact Congress in regard to national legislation.

I am at the present moment president of the Housekeepers' Alliance, a group of home-makers. We started in 1908.

I am a past president of the Women's Civic Club.

5040 I have been six years chairman of the National Women's Party, which seeks, as you know, to secure an equal rights amendment to enhance the status of men and women, to give men and women the same status constitutionally.

I have been corresponding secretary of the Washington Institute of Mental Hygiene under Doctor William A. White, the noted psychiatrist.

I have been recording secretary of the Twentieth Century Club.

I have been vice-regent of my chapter of the D. A. R., the L'Enfente Chapter.

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I have spent my life devoted to that type of work.

I am also editor of the Equal Rights magazine at the present time.

5041

Q. Now, Mrs. Wiley, in these various organizations or in some of them have you been concerned with the problems which affect society sociologically and morally? A. Yes.

Q. I want to show you some copies of the magazine, Mrs. Wiley, and ask you to state your opinion to the Board concerning certain items that I have called to your attention.

The first magazine I show you is the January, 1943, issue of Esquire, and I call your attention to a certain item on page 45, entitled "Benedicts, Awake!"

5042

I ask you to examine the poem that is there printed. Take your time so you will have a good chance to look it over.

Would you state to the Board, having examined the item I have called to your attention in this Esquire magazine, whether you consider this item decent or otherwise? A. I would like to say to the Board and the gentlemen in this room that I have a son in the South Pacific, a lieutenant in the Navy.

I am perfectly certain that my son has no such thought as that. I would feel if he had that I would be an unworthy mother.

5043

I think to send that to the boys abroad, the young men we have brought up, would be an insult to them.

I rather like to think of what young Mr. Magee, the son of the assistant clergyman in St. John's Church, said, that he felt as if he touched the face of God. I think the young men I know in the armed forces, and I know a great many boys besides my son, do not dwell on this subject matter. I think that is all I care to say.

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5044

Q. If they were induced to dwell on it by sending this article, do you think it is to their moral welfare? A. I would not.

Q. Do you call the item an indecent item? A. I do.

Q. Now, Mrs. Wiley, I call your attention to the Varga girl pictures on pages 97 to 108 of the January issue of Esquire. What is your opinion with respect to these pictures as to whether they are proper or whether they contribute to moral welfare of boys or men or otherwise, that have come under your observation?

5045

Do you consider them decent or indecent? A. I had occasion before I left home to see what the definition in the dictionary was of "obscene". I believe this case hinges upon that word. I found it was "disgusting, offending to chastity or to modesty".

I think these pictures answer that definition.

Q. Now on page 137 of the same issue, the cartoon showing two men looking through a sky-light with the caption: "And to think I gave up drawing". What is your opinion as to whether that is a decent or indecent cartoon or an obscene cartoon? A. I should think that also was indecorous, morally offensive, and unfit. It is also the definition in the dictionary.

5046

Q. Now, on page 83 of the same publication, the January issue of Esquire, an article entitled: "Those Star and Garter Blues", I call your attention to this article and to this language:

"The scene is the old familiar burlesque routine of the court room; Clark is presiding, as an owl should; and merely as an incident, Gypsy Rose Lee is the defendant against whose navel Clark finally blows a paper tickler."

What is your opinion of that language in this magazine? A. I would say that it was degrading.

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Q. In the same article there is some further language, beginning at the bottom of the first column on the left:

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"This time Bobby Clark is in a sexy show which has even a few dirty spots, I suppose. And novelty is the last thing you look for there. Burlesque patrons are single-minded, if that's the right word; and the grinds and teases follow a pattern which can't be altered much; because like children listening to an oft-told tale, the fans of burlesque do not want novelty; they think that something has gone wrong if the tale is different. So you have girls stripping to a riotous dance or you have girls stripping not to a dance. And since this is uptown stuff, you have the odd spectacle of Gypsy Rose Lee stripping awkwardly and self-consciously, which may be a novelty, but isn't very good fun. Certain little gestures as she fluffs the ruffles on her jacket are enticing; but the major part of her strip she does from under the cover of a bouffant dress, working strings and letting petticoats drop \* \* \* and down to the planted scream in the audience and the laugh Miss Lee manages every night after the scream—it is just this side of the simple honest denudation she was capable of five years ago. Miss Lee was on the verge of matrimony the week I saw her, but it wasn't modesty that seemed to restrain her; it was a snobish superiority to her material. And she wrote it herself."

5048

What is your opinion, Mrs. Wiley, as to these characters and this scene in this magazine? A. I would say it was extremely degrading to the people who saw it.

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Q. How about the people who read about it? A. Equally so.

Q. Equally so? A. Equally so.

Q. Continuing the same article:

"Between Bobby Clark who appears in a long funny scene wearing flannel drawers and Miss Lee whose specialty is

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being dressed in three well-placed, presumably provocative flowers, you have the essence of burlesque. In this particular show there is also a young slender dancer named Leticia, who does a wonderful trick ballet dance—a trick because it is actually erotic, whereas so many of the hip grinds are not. There is also a character from the night clubs who makes her breasts jiggle, and this is considered funny, but I didn't think so even at the night clubs where her frankness was greater, her skill no more engaging. A stripper who does an orgiastic dance verges on the erotic; but the entertainment value isn't high. In fact, the burlesquers learned long ago that the strong emotions they wish to arouse are quenched by the cold water of comedy."

5051

What do you think of that description, Mrs. Wiley? A. It is almost beyond me for words.

Q. Well, will you give us an expression as to whether you think it is decent or not? A. Extremely indecent.

Q. In the last column—I had better read the whole paragraph so it will be clear to you:

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"But the combination is tried and sometimes it succeeds, with always a shade in favor of comedy. Notable in Billy Rose's show a year ago was Professor Lamberti (an American wight named Lambert, but he had to be Lamberti to go with his wig); this same Lamberti has a spot in the Clark-Lee show, bringing with him the revelry of a smoker-entertainment, the riotous satisfaction in a job which isn't dirty in the least—but you couldn't show it in vaudeville and probably not to Will Hays. Lamberti plays what he calls the 'ixilphone' with many a flourish; and as he goes into his big number ("Wishing") a tall cutie saunters in behind him and begins to strip; she sheds a garment just as Lamberti finishes a chorus; applause recalls her and starts him again; his bland and leering ignorance of why



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the piece is so popular (he played 103 choruses of it once at a Legion convention, he says) is masterly: he smacks his lips and flutters his tongue and waves his toupee and rolls his eyes—purely as a virtuoso of the xylophone. And even the old, sad, faithful lechers of the audience prefer him, I think, to the naked strip, so to speak, of some of the other acts.

5053

"The business of getting comedy out of the sexual appetites isn't an easy one. Infinite variety, sex may have; but its singleness of purpose dulls the brilliance of its techniques. The coming together of the male and female principles in the vegetable world (if they do come together there) would not be interesting, unless cowslips flirted and violets were really bashful and false-ragwort were a seducer. It's the trace of mentality that gives us sex as a subject for fun; the trace (not more) of morality that adds spice. So an entertainment which by-passes all the refinements, and whoops it up about cohabitation, with a sneer or a laugh or a cackle or even a shout, has a limited field. Burlesque and all other exhibitions seem to run into a groove; it's the best groove and you mustn't call it a rut. The girls in two-bit burlesque are seldom beautiful, but by being where they are they touch off lubricity; they combine some exceptional qualities because they are outspoken and pretend innocence and corruption at the same time. They make familiar gestures whose meaning cannot be in doubt; but these gestures become a special formalized movement which ~~one~~ we would be surprised to encounter on the street or in private. The whole event is mass-seduction with a delayed satisfaction, if any. It can't be the divine event towards which all aesthetic creation moves; but it is a relief after some mincingly disagreeable expressions of sexual impotence or variation."

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5056 Do you have any opinion of that description? A. A very decided opinion.

Q. What is your opinion? A. I think that one of the finest things in life is a happy marriage. I think that a happy marriage is based upon sacrifice and nobility. I think sex is the underlying feature in life—of course, we all know that—we are all grown people. I have two sons and four grand-children. I look upon nobility and sacrifice as the two highest things in life to fit us for the future life, which I deeply believe in. I think that all of this is degrading and drawing down character. Mothers of sons want to see their sons fine men, and I think that last thing 5057 I have heard is about the most indecent, most degrading thing I ever heard or seen in a publication.

I must say I don't deal in those publications. I don't know anything about them. I haven't the time. I am too busy with important things in my life to descend to such. I would like to recite a poem by Ruskin:

“Oh, wasteful woman, she who may on her own self set  
her price,

Knowing he cannot choose but pay,  
How hath she cheapened Paradise,  
How spoiled the bread, and spilt the wine,  
5058 That spent with due respective thrift,  
Had made beasts men and men divine.”

I have known that since a child. I believe it. The higher dignity you place upon women, the higher the race, and this magazine is degrading and depressing to women, and it is degrading to the race.

Q. Now, I want to show you a copy of the February issue of Esquire and call your attention first to a picture on page

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65 showing a cartoon of a woman and an Oriental girl with the caption: "What am I bid for this 100 pounds of sugar?"

5059

Will you express your opinion as to whether or not you consider this a decent or indecent picture? A. Indecent.

Q. I also show you page 34 of the same issue, the picture of the Varga girl in what apparently is a night robe of some description, and ask you whether you consider that a decent picture? A. I would say indecent.

Q. I call your attention to page 77 of the same issue and particularly to the picture on the bottom of the same page showing these colored folks in the act of undressing in the presence of other people with the bed in the foreground. I ask you what you think about that picture? A. Very degrading, indecent.

5060

Q. Do you mean morally? A. Morally degrading. The suggestion is very harmful.

Q. Now, I show you the March, 1943, issue of Esquire and call your attention to an advertisement on page 9 thereof of Thorne Smith's three wittiest and most ribald novels, with the further caption: "America's one and only Rabelaisian humorist," and the pen and ink drawing of the man and woman on the bathing beach, and ask you to please state your opinion of that. A. I object to it very much.

Q. On what grounds? A. Because it is harmful to morals.

5061

Q. I show you page 49 of the same issue, a cartoon with the caption, "I wonder how the Sultan knew this was my birthday," and ask you to examine that, please.

What is your opinion of that cartoon, Mrs. Wiley? A. I think it is harmful.

Q. Morally? A. I think it is morally harmful. It suggests slavery of women.

Q. It suggests concubinage of women? A. Absolutely.

Q. I show you in the same issue page 107, a cartoon with

*Mrs. Harvey W. Wiley—for Post Office—Direct.*

5062

the caption, "It seems like somebody's allers clamorin' to somebody to open up a second front, don't it?" and ask you if you have any opinion of that cartoon. A. I don't even understand the picture.

Q. You don't understand the picture? A. No.

Q. Mrs. Wiley, I show you the front cover of the April 1943 issue of *Esquire*, showing the character known as Esky and two females portrayed, and ask you what is your opinion of that. A. I object to it very much because the suggestion of the leary-eyed man with the women is inimical to the dignity of women.

5063

Q. Now, would it have any effect, in your opinion, upon decency to contemplate that picture? A. I think it might suggest very wrong thoughts in the minds of other men.

Q. You mean indecent thoughts? A. Indecent thoughts.

Q. I call your attention to the May issue, particularly to pages 32 and 33, illustrations, and the article entitled "The Savage Beast In Us," showing women in various poses, and ask you if you have any opinion with respect to those. A. I object to them very much on the ground of indecency.

5064

Q. I show you the June issue and call your particular attention to a girl on page 34, this costume, and ask you whether you have any opinion on that picture. A. Yes. I dislike it very much indeed. I think it is undignified and unwomanly. It is contrary to the highest ideal that women should hold up before mankind.

I would like to say right here, if I may, of course this is getting a little monotonous, they are all the same to me, I have spent my life in trying to build up the dignity of women. I have been thirty years in the movement to secure votes to give women political equality and now to secure equal rights for men and women, to secure an equal constitutional status, and all of this that I have seen

*Mrs. Harvey W. Wiley—for Post Office—Cross.*

this morning is contrary to the campaign that we women have carried on and sacrificed so much to carry on for thirty years, with our time and our effort. Everything we could possibly devote to our campaign we have done, and this is all tearing down that which we have tried to accomplish, that women have gained their point by chicanery and the lure of sex.

5065

It is contrary to every fiber of me, seeing the things I have seen here. I don't think I need see any more, I have seen enough; I am convinced from what I have seen.

Q. You would have the same opinion about any similar matter I might show you at this time, Mrs. Wiley? A. I imagine from the pile you have over there that you have quite a bit more. There is no use of looking at it. I am a very busy person and I would like to get home.

5066

Q. Your opinion would be the same about any material I might show you at this time, Mrs. Wiley? A. I imagine if they were worse it would be more so. It is a matter of opinion. Of course some things are worse than others.

Mr. O'Brien: Your witness.

*Cross Examination by Mr. Bromley:*

Q. Do you find there is a great deal of this sort of thing in current magazines today? A. I don't see it.

5067

Q. You don't know about it? A. I don't see it. I read the U. S. News, I read Reader's Digest, I read Time, I take the Good Housekeeping magazine, I take the Saturday Evening Post, and I read two newspapers every day. I am not conscious of seeing this.

Q. Do you ever look at the bathing suit advertisements? A. Well, I suppose if I were to buy a bathing suit I might, but I don't think I have for many years.



*Mrs. Harvey W. Wiley—for Post Office—Cross.*

5068 Q. Are you familiar with the type of bathing suits women are wearing today? A. I believe at the Chevy Chase Club I have seen women out there in bathing suits.

Q. You approve of that, don't you? A. It is necessary in the water to have the ability to swim but you don't have to see a bathing suit in a parlor.

Q. I say, you approve of the bathing suits? A. On the bathing beach where it belongs.

Q. I show you this exhibit. You have no objection to that kind of costume on the bathing beach, have you? A. I have never seen one like that; I don't know, I would have to see it to be sure.

5069 Q. You can't tell from the picture? A. No. I wouldn't as I look at it, I am revolted by it. At Chevy Chase I have seen nothing like that. I don't think they would allow it out there.

Q. You think that is indecent? A. I do.

Mr. Bromley: Exhibit 24 is referred to.

*By Mr. Bromley:*

Q. Is this bathing suit decent or indecent in Exhibit 150? A. Is that—are those stockings or is that the shadow of the sun? I can't make it out.

5070 Q. Those are stockings. A. Those are stockings. That is the kind of suit I used to wear with the stockings.

Q. Is that decent or indecent in your opinion? A. I think the figure is clad for aquatic sports and I would think that was all right.

Q. You would think that was decent? A. It seems to me the woman is thoroughly covered.

Q. You would think that was decent, would you? A. I think it is suitable for the beach. I am not raising the



*Mrs. Harvey W. Wiley—for Post Office—Cross.*

question of decency. I think it is suitable for the beach. Bathing is a special sport and you have to be untrammelled in order to swim. You can't swim with your ordinary clothes on, so therefore you resort to a bathing suit, but the point I was making is—

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Q. I am asking you if you think this is decent or indecent. A. I don't care to say. I do not wish to pass an opinion. I would have to see that woman outside to be sure. I do not like the pose of her head, or attitude.

Q. You think her attitude is indecent? A. No, I wouldn't say that. I am not a prude but I like suitability and I would have to see that person in order to pass judgment. I do not wish to pass judgment on that picture. Am I compelled to?

5072

Chairman Myers: Just express your opinion as you wish to.

The Witness: I am not prepared to pass judgment—I am not compelled to pass judgment on that, the Judge says.

*By Mr. Bromley:*

Q. Do you recognize this picture, then? A. No, I don't.

Q. Did you ever hear of Annette Kellerman? A. Yes, I have heard of her. She is a great exponent of health.

5073

Q. A great exponent of health? A. Yes.

Q. Now, in your opinion is this picture decent or indecent? A. I told you that I think on the bathing beach a bathing suit was a suitable costume, but I don't like to see it in a drawing room. I think Miss Kellerman did fine work in building up health and so forth. I haven't expressed an opinion on that picture.

*Mrs. Harvey W. Wiley—for Post Office—Cross.*

5074 Q. Would you mind expressing one, please? A. I should express admiration for Miss Kellerman's work for health.

Mr. O'Brien: I think, Mr. Chairman, that in order that the witness may be fairly treated, counsel should specify the use of the picture or under what circumstances it appears, if he insists on an opinion.

*By Mr. Bromley:*

5075 Q. Now that you have heard Mr. O'Brien, could you tell me in your opinion whether that picture is decent or indecent? A. Well, taking the expression of the picture and who the person is and what her attitude in life is, I think it is decent. I think the purpose for which you do things in life has a great deal to do with it. It is the motive in those pictures which is harmful.

Q. Will you look at this Exhibit 133, and tell me if this picture is decent or indecent? A. I think I am being trapped, Your Honor.

Q. You found that out, have you? A. Yes. I knew I was going to be trapped when I came here and I know I shall be in every column tomorrow.

5076 Q. You haven't been reading the newspapers, have you? A. I read Dr. Marshall's testimony yesterday.

Q. You did? A. Yes.

Q. Now, just where and how are you being trapped? A. I am trying to be made a prude. I am not a prude.

Q. Well, would you mind telling me if that picture is decent or indecent? A. If I had a daughter I shouldn't like to have her photograph in that costume. I have no daughter. I have only sons.

Q. Is that your criterion for decency, Madam? A. My criterion for decency is anything that is proper, in order.

*Mrs. Harvey W. Wiley—for Post Office—Cross.*

certainly not harmful to human dignity. This woman is evidently by the ocean. I see the ocean there. She has probably come in and out of the ocean and if she stays there all right for me, but I do not wish to see that picture displayed except where it belongs. I believe in suitability, suitability; I don't like the picture. It is not pleasing to me and to my eye because I don't believe in such poses.

5077

Now, I am going to be raked, I know, over the coals by those people over there for being a prude. No, I am not a prude. I know I am not a prude; I am a dignified woman who believes in life being lived for a purpose.

Have you ever been to the headquarters of the National Education Society and seen the statue of Horace Mann: "Be not afraid to die unless you have won some victory for humanity". Do you think this sort of thing is winning a victory? I don't.

5078

Q. Well, do you think it is decent or indecent? A. I think it is indecent. You force me to an answer. I say it is indecent for a picture, not for the beach. You asked me about the picture. Now, I don't know that young lady. On the beach I think it would be all right, but not as a picture to be published in a magazine.

Q. This picture, Exhibit 131; do you think it is decent or indecent? A. I object to it very much.

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Q. Do you think it is decent or indecent? A. Do I have to answer. Your Honor?

Q. I wish you would, please. A. It is a matter of please?

Q. Yes. A. Then I refuse to answer. You have shown me enough. You know my state of mind.

Q. Now, why do you refuse to answer? A. Because I will be misinterpreted.

Q. You did not have any fear of misinterpretation when you came in here and bitterly condemned Esquire, did you?

*Mrs. Harvey W. Wiley—for Post Office—Cross.*

5080

A. Because all the implications in Esquire are derogatory. I saw nothing—I saw it was a magazine for men, right on the top page.

Q. You find that indecent, do you? A. No, that is the implication, that this is the kind of man you have right here on the cover as this person called Esqy, with his goggly-eyes and his leering expression; and it advertises right on this cover what the purpose is.

Now, don't pin me down. You are a mature person and I am a mature person. You know exactly what the implication is and I know exactly what the implication is. Why dispute it?

5081

Q. Did you find a single decent thing in any one of these eleven issues of Esquire? A. I see William Lyon Phelps' name as one of the heads of the departments. He is one of the acknowledged writers and leaders of the country. I am surprised to find his name in this magazine, and I don't know why it should be in there.

Q. Did you find a single decent thing in any one of these eleven issues of Esquire? A. I didn't take time to read every page and I wouldn't. I answered on the things Mr. O'Brien read to me or the things which he showed me and they are the things I condemn. I haven't time to read Esquire, nor do I wish to. I am not a man.

5082

Q. You did not read a single article or story in its entirety in any one of the eleven issues? A. I didn't have time.

Q. Did you? A. No, I haven't, nor would I.

Q. And the only thing you know about the magazine is what Mr. O'Brien showed you or read to you, isn't it? A. Absolutely. He showed me enough. He has shown me enough. By and large, I have seen enough of this magazine.

"By their fruits ye shall know them". I have seen enough fruits in this magazine to know this magazine.

*Mrs. Harvey W. Wiley—for Post Office—Cross.*

Q. Did you have a little talk with him before you came in? A. I did. Witnesses always talk with the attorney beforehand. You can't intimidate me that way. I have been on the jury.

5083

Q. In that little talk he pointed out these things that he showed you today? A. He didn't have to point out these things.

Q. Didn't have to point those things out to you? A. No. This is the first time I have seen it. I saw the top of this magazine, this particular one he showed me, and I saw the Varga pictures in the December issue. I think I was only in there a few moments.

5084

Q. And that is all you saw? A. That is all I saw. But I have seen enough in court—that's enough to condemn the magazine.

Q. Is this the first time, I mean today, that you have ever considered this objected-to material with Mr. O'Brien or anybody else? A. I have seen copies of the magazine before.

Q. You are not deliberately misunderstanding me, are you? A. What was your question again?

Q. Is today, this morning, the first time that you have taken a look at the material complained of in these 1943 issues? A. It is. I am telling the truth. I am sworn to tell the truth.

5085

Q. How long a time did you spend looking at this material before you took this witness stand? A. A very few moments.

Q. How many moments? A. I couldn't tell you. How many moments was it, Mr. O'Brien?

Mr. O'Brien: Mr. Chairman, you know how long the recess was. I think that answers the question.

The Chairman: About twelve minutes.

*Mrs. Harvey W. Wiley—for Post Office—Cross.*

*By Mr. Bromley:*

5086

Q. The recess was about 12 minutes. Will you accept that as a fair estimate of the time you have spent looking— A. Yes, but I have seen enough in this court room, shared by this entire group of people, to condemn the magazine.

Q. As a whole? A. Yes, as a whole.

5087

Q. And that is all you have seen? A. I have seen samples. My husband, when chief of the Bureau of Chemistry, had to take samples first. He had to sample things. He couldn't see the whole output of the manufacturer or canner. They took samples and took them to the laboratory. I consider this as a laboratory.

How many did we look at, Mr. O'Brien?

Mr. O'Brien: Six out of eleven issues.

The Witness: That's fifty per cent.

*By Mr. Bromley:*

Q. Oh, you only looked at six out of eleven issues? A. I saw them.

Mr. Bromley: That's all.

5088

Mr. O'Brien: That's all, Mrs. Wiley. Thank you very much.

(Witness excused.)



*Edwin Holt Hughes—for Post Office -Direct.*

EDWIN HOLT HUGHES a witness called by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

5089

*Direct Examination by Mr. O'Brien:*

Q. Will you state your full name for the record, please?

A. Edwin Holt Hughes.

Q. Will you state your title of dignity in your profession, please? A. I am Bishop of the Methodist Episcopal Church for what is known as the Washington area.

Q. And will you tell the Board something about your education or some of the degrees of learning which have been conferred upon you?

5090

Mr. Bromley: I object to this question as immaterial and irrelevant on the ground that this is merely cumulative and the Government has already exceeded its quota of three clergymen.

Chairman Myers: I think he is entitled to qualify him. Objection overruled.

Mr. O'Brien: I might say the Bishop is an educator as well.

The Witness: I am a college graduate with a fair record. I was college president for five years, acting president of the American University one year, acting president of Boston University in Boston, Massachusetts, for one year. I have succeeded by degrees in life.

5091

I think I have fourteen honorary degrees in addition to the under-graduate degrees, and I would be perfectly willing to sell some of them at a good price.

*Edwin Holt Hughes—for Post Office—Direct.*

5092

Q. When were—were you president of De Pauw University, Bishop Hughes? A. For five years.

Q. And do you consider yourself, Bishop Hughes, well acquainted with the problems of humanity with respect to education, morals, and social conditions? A. Well, I am just an ordinary man. I don't claim to be particularly expert except in my general observations of life, and the contacts I have had through my experience.

5093

Q. Yes, sir. Now, Bishop Hughes, you have not had any extended opportunity to examine the publication which is here before the Board, known as *Esquire*, have you? A. I shouldn't say extended, no. I don't know, gentlemen, how much liberty a witness has here. My appearances hitherto have been before Senate committees and committees of the Lower House where I have had a great deal of liberty.

The *Esquire* magazine is one for which I have never subscribed. I have seen it quite often in barber shops—occasionally in barber shops and quite often on Pullman trains. I travel a great deal.

5094

Q. Well, sir, I wish to exhibit to you here before the Board, certain issues of *Esquire* containing certain items which I will call to your attention and ask if you will tell the Board whether you consider these items to be of a decent or indecent character.

The first issue I call your attention to is the issue of January, 1943, pages 97 to 108, each page of which bears a picture of what is known as the Yarga girl.

Will you examine those, if you please, Bishop, and give the Board your opinion as to whether these are decent or indecent pictures?

Mr. Bromley: I object to that question because it is incompetent, immaterial and irrelevant, because of no qualifications of this witness shown.

*Edwin Holt Hughes—for Post Office—Direct.*

Chairman Myers: The objection is overruled.

5095

The Witness: I have seen this already. I should say that they are plainly suggestive in the wrong direction, plainly so.

*By Mr. O'Brien:*

Q. You mean by that that you consider them indecent pictures?

Mr. Bromley: I object to leading the witness. When you don't get an answer you like, I object to the leading question. I object to the form of the question.

5096

Mr. O'Brien: I withdraw the question and ask the witness whether he considers the pictures decent or indecent.

He has raised a technical question, a technical objection to my question, Bishop.

Mr. Bromley: I object—

Mr. O'Brien: I have a right to explain to the witness why I am repeating the question.

Mr. Bromley: No, you haven't.

Chairman Myers: I think the witness understands the question. Read the question.

The Witness: That is a difficult question. I have already said that I consider the pictures definitely moving in the wrong direction, stimulating appetites that do not need any stimulation.

5097

If that is what you mean by indecent, then they are indecent.

*By Mr. O'Brien:*

Q. I call your attention to the February issue, Bishop Hughes, another picture of the Varga girl on page 34, which

*Edwin Holt Hughes—for Post Office—Direct.*

5098 I hold up for your examination, and ask you to express your opinion of that picture. A. Well, with the poetry that's written at the bottom it is looking in the wrong direction and cannot be intended to do anything but that.

Q. To stimulate appetites?

Mr. Bromley: That is objected to as leading.

Mr. O'Brien: I want to complete the record. May I have a ruling?

Chairman Myers: Go ahead and ask your question. You have not finished it.

5099 *By Mr. O'Brien:*

Q. Do you consider this picture that I showed you an indecent picture? A. Together with the piece of poetry there, yes.

Mr. Bromley: You mean in the sense you have defined it?

The Witness: Yes.

Mr. Bromley: Could I ask a question?

Chairman Myers: Yes.

5100 Mr. Bromley: The piece of poetry referred to is not one complained of by the Post Office, is it, Mr. O'Brien?

Mr. Hassell: I submit to the court that the poetry and the pictures are all in here and they should be considered together.

Chairman Myers: That was my understanding, the understanding I had. I may be wrong.

Mr. Bromley: I think where they objected to the verse they specified it in the citation and they did not specify this verse.

*Edwin Holt Hughes—for Post Office—Direct.*

Mr. Hassell: That may be true, but we called attention to the picture and the picture has a title and the title is on the verse.

5101

Mr. Bromley: But you made a careful distinction when you filed your pleading.

Mr. Hassell: I have stated and I have told counsel repeatedly that there are many other things in these magazines that are of an objectionable character.

Mr. Bromley: I would like to look at the citation because I think that is a deliberate misrepresentation of the charge.

5102

Mr. O'Brien: May we postpone that discussion?

Chairman Myers: Let's go ahead with the witness.

Mr. Bromley: I move to strike the testimony regarding the Varga girls and the verse, on the ground we have received no objection to it in the citations. It is not matter complained of.

Chairman Myers: The objection is overruled.

*By Mr. O'Brien:*

Q. Bishop Hughes, I show you the February issue again and call your attention to the cartoon on page 65, calling attention to the girl and the Turk, presumably, with the caption, "What am I bid for this 100 pounds of sugar?"

5103

What is your opinion of this picture? A. Of course it is not good.

Q. Not good? A. Absolutely not good. Any man with a daughter knows it and knows the meaning.

Q. I also show you, Bishop, the picture on the bottom of page 77 showing two colored persons in the act of

*Edwin Holt Hughes—for Post Office—Direct.*

5104

putting on or removing garments in the presence of other persons, with a bed in the left-hand corner of the picture.  
A. That is just a plain piece of vulgarity.

Q. I show you the March issue and call your attention to an advertisement on page 9 thereof with the caption, "Thorne Smith's three wittiest, most ribald novels; America's one and only Rabelaisian humorist," and the picture right under that of the two persons on the bathing beach. I ask you to express your opinion of that advertisement. A. Is anybody defending that?

5105

Q. Yes, sir. You think it is indecent too, I gathered from your answer. Is that correct?

Mr. Bromley: That is objected to as leading.

Chairman Myers: Has he answered the question?

Mr. O'Brien: He has asked if anyone is defending that.

Chairman Myers: Go ahead and answer the question.

*By Mr. O'Brien:*

5106

Q. I show you a picture in the April issue displaying the Varga girl again, Bishop Hughes, and ask you if you consider this, too, decent or indecent.

(At this point, a flashlight picture was taken of Bishop Hughes.)

Mr. O'Brien: After all that annoyance and interruption, Bishop—

The Witness: All right, reporter—just write it up nicely; don't make it a joke.



*Edwin Holt Hughes—for Post Office—Direct.*

*By Mr. O'Brien :*

5107

Q. Now, coming back to the picture, Bishop—I am a most annoying character, I know—would you say whether you consider it decent or indecent? A. I would say it was not uplifting. I wouldn't care to exhibit it in my Sunday schools. It is not quite as bad as some of the others.

Q. What do you think of this picture on the April cover showing Esky in a reclining position with two women in the background? A. Maybe there is something there that I don't read. I shouldn't regard them as a trio of beauties.

Q. Do you consider this attitude and expression of the Esky character as decent? A. I couldn't say, Mr. O'Brien, that I see anything indecent in that. I don't see any point to it. I think it is just plain cheap.

5108

Q. I show you the May issue of Esquire and call your attention to pages 32 and 33, being a number of pictures of women in an article entitled, "The Savage Beast in Us," and ask you to express your opinion, please, on those pictures. A. I think the heading represents it—what is the heading?

Q. "The Savage Beast in Us." A. That is good.

Q. You think the pictures represent that? A. I think they represent the heading very nicely.

Q. I show you a number of pictures on pages 86 and 87, showing Esky in various situations, and ask you if you find anything decent or indecent about those pictures. A. Yes, I don't think they are worthy of circulation.

5109

Q. Do you consider those information of a public character? A. Pardon me?

Q. Do you consider such pictures information of a public character? A. I shouldn't think that they carried any tremendous information or inspiration or illumination.

*Edwin Holt Hughes—for Post Office—Direct.*

5110 They were not intended to, and the man who got them together knew it.

Q. Page 34 of the June issue, Bishop Hughes, also bears a picture of a Varga girl.

I ask you to tell the Board what you think about that picture. A. And the legend coming in again?

Q. There is a verse in the corner. A. I wouldn't put it up in my study.

Q. Would you consider it a decent picture, Bishop? A. I think if any man in this room came into my study and found it on the wall, he would wonder what kind of a man this preacher was. If that is indecent, you will have to make the best of it.

5111

Q. I call attention to page 134 of the June issue and wish to read you—unless you desire to read for yourself—this verse at the bottom of the column, this one here (indicating and handing book to witness). A. Just plain dirt, filth.

Q. That is the item entitled, "Libel suits were as wine to the hell-firin' editor of the old West." That is the name of the item, for the record.

I call your attention to page 141 of the July issue, certain lines there, and ask you to please read those and tell us what you think about those. A. I would call that, Mr. O'Brien, vulgarity rather than indecency.

5112

Q. Would you call it filthy? A. Well, it would depend again on your definition. It is certainly vulgarity.

Chairman Myers: You had better note what it is, where it is in the book. I don't believe you have the notation of where it is in the record.

Mr. O'Brien: Page 141 of the July issue, "Dog's Worst Friend," the item just presented to Bishop Hughes for his opinion.

*Edwin Holt Hughes—for Post Office—Direct.*

*By Mr. O'Brien:*

5113

Q. I call your attention to the August issue of Esquire, page 38, another picture of the Varga girl, which I will hold up for your examination. A. I wouldn't call that indecent. Mr. O'Brien. It is not a thing I would want around, but then I wouldn't call it indecent.

Q. I call your attention to page 89, a picture of a girl and a sailor, with a vacant space which says, "Paste your face here." A. That is indecent, plainly so.

Q. That is the August issue.

Would you call that picture I have just shown you, Bishop Hughes, information of a public character? A. I don't think it would be adopted for any encyclopedias.

5114

Q. I call your attention to this advertisement on page 127 of the August issue, a girl reclining on her back, and ask you whether you consider that decent or otherwise—with the caption. A. Of course it is not decent.

Q. I call your attention to page 38 of the September issue, another Varga girl picture. A. I wouldn't think that that was indecent, Mr. O'Brien.

Q. You don't think it is indecent? A. No. It is not a thing that I would care to have circulated. I don't think it would do any good, but it is not as definitely suggestive as some of those others were plainly meant to be.

5115

Q. I show you a cartoon on page 65 showing a milkmaid outside the door of a dwelling house, with the caption, "Come back later, sweet; my wife hasn't left for the factory yet." A. Well, everybody knows that is wrong and indecent. Everybody knows it; there can be no debate about that.

Chairman Myers: Mr. O'Brien, is this a convenient place for us to adjourn?

*Edwin Holt Hughes—for Post Office—Direct.*

5116

Mr. O'Brien: I have two more issues to cover yet, Your Honor.

Chairman Myers: All right, go ahead.

*By Mr. O'Brien:*

5117

Q. I show you the October issue of Esquire, Bishop Hughes, another picture of a Varga girl on page 44. A. Well, there has been a good deal of discussion, Mr. O'Brien, about those Varga pictures. There is a good deal of skill in them, as you will see. Personally, those things don't appeal to me, that is all. I can't understand why one would want that thing around, but when it comes to definitely classifying it among the indecent and obscene things, I wouldn't want to go that far.

Q. You wouldn't think that a contemplation of this picture might arouse indecent thoughts? A. Yes, I think it might do that.

Q. I show you a picture on page 49 of the same issue, October Esquire, showing a woman seated in a man's lap and another man standing by, and the caption, "Hello, dear, this is the gentleman who sells us our fuel oil." A. It just is some more vulgarity, that is all.

5118

Q. Would you say that the vulgarity amounts to indecency, Bishop? A. Well, it moves very largely in that direction.

Q. What is your opinion, Bishop Hughes, of the picture on page 60 of the November issue, showing these women? A. That is not awful.

Q. Well, what would you term it if not awful? A. What?

Q. What would you term it if it is not awful? Would you say it is vulgar? A. Well, it is not nearly as vulgar as some of the rest of them. It is the kind of thing that I don't care for, Mr. O'Brien.

*Edwin Holt Hughes—for Post Office—Direct.*

Now I am a Puritan and proud to be a Puritan, absolutely. I apologize to no man for the Puritanistic attitude that I take toward life. That is not the sort of thing I should want to have around, but I wouldn't stick a label of indecency on it.

5119

Q. Would you say whether or not, in your opinion, the contemplation of this picture might arouse indecent thoughts? A. Well, perhaps with some people without particular self-control.

Q. The cartoon on page 52 showing some men and women in an Oriental setting, where one man is departing with two women, and the caption, "Such a neighbor, always borrowing." A. Now, of course, if I read into that what it suggests, then immediately the persons who are interested in it would say that I am most likely an old man, and probably would quote that passage, "To the pure all things are pure."

5120

Q. Assuming that it represents a man borrowing two concubines, what would you say about the cartoon? A. Well, if that is what it represents, why, of course it is indecent, and that is what apparently it does suggest.

Mr. O'Brien: I have no further questions on direct examination.

Chairman Myers: Well, suppose we adjourn until 1:30.

5121

(Whereupon, at 12:08 o'clock p. m., the hearing was adjourned until 1:30 o'clock p. m.)

*Edwin Holt Hughes—for Post Office—Cross.*

AFTERNOON SESSION.

5122

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: Are you ready?

Mr. O'Brien. I am ready, if Your Honor please; and the witness, is ready for cross examination.

Chairman Myers: All right, Mr. Bromley.

5123

EDWIN HOLT HUGHES, resumed the stand and testified further as follows:

*Cross Examination by Mr. Bromley:*

Q. Had you ever seen any of this material in these eleven issues, sir, before you took the witness stand this morning? A. Yes.

Q. When did you look at them? A. I was shown them by Mr. O'Brien.

Q. Was that this morning, Bishop? A. Yes.

Q. How long a time did you spend with Mr. O'Brien looking at them? A. Oh, I suppose fifteen minutes, Mr. O'Brien, would you say?

Mr. O'Brien: Fifteen minutes, I would say, and I think you had some previous conference with my assistant.

The Witness: I reached a conviction, though, quite a little while ago, Mr. Bromley, with respect

5124



*Edwin Holt Hughes—for Post Office—Cross.*

to this matter through another issue that is older than this.

5125

*By Mr. Bromley:*

Q. And your opinion that you express here today is based upon your examination of that older issue as well as these? A. Yes. That was a June issue, if I remember correctly, for 1942.

Q. 1942? A. Yes.

Q. June? A. Yes, June, 1942.

Q. Therefore, am I correct in saying that as far as these eleven issues are concerned, prior to the time you came on the stand you spent but fifteen minutes looking at them? A. Yes. Fifteen convincing minutes.

5126

Q. And I take it that the only material that you examined was the material which has been called to your attention this morning? A. Not wholly that. There were some other things that I looked at, but in the main, however, as you say.

Q. I take it you did not have time to read in its entirety any article or story or piece in the magazine? A. Oh, I venture to say I have seen some very good things in Esquire. I read a while ago, when I was going to bed, someone had some stories from Esquire that were not at all bad; a rather good thing to go to sleep on.

5127

Q. They were not designed for that purpose, Bishop? A. What?

Q. They were not designed for that purpose. Then you were probably familiar with the fact that among the contributors to this magazine were men like Sholem Asch? A. Yes, Rex Beach.

*Edwin Holt Hughes—for Post Office—Cross.*

5128

Q. Rex Beach? A. Yes.

Q. Theodore Dreiser? A. Yes.

Q. Lord Dunsany? A. Yes.

Q. And Havelock Ellis? A. I didn't know that Havelock had gotten in.

Q. Leon Feuchtwanger? A. Yes.

Q. F. Scott Fitzgerald. Did you know that? A. I didn't know that, no, but unquestionably. Mr. Bromley, I presume some very fine people contributed to it. I wrote an article once for Smart Set.

5129

Q. Was it published? A. It was, the biggest fee I ever had for writing an article.

Q. Any trouble with the Post Office Department about it? A. No, not the slightest need of that.

Q. Now, sir, I direct your attention to this "Paste-Your-Face" cartoon about which you have spoken. Did Mr. O'Brien or anybody else call your attention to the July issue, page 81, which is another "Paste-Your-Face" cartoon? A. No.

Q. You have never seen that before? A. I don't remember that I did, sir.

Q. Do you notice over here at the left there is a little box of text? A. Yes.

5130

Q. I want to direct your attention to this part of it—  
A. And that printed matter does come in, does it?

Q. That printed matter is with relation to the cartoon, yes.

Now, do you see that this cartoon is a picture of a Marine with "Paste your face here"? A. Yes.

Q. Do you understand that the purpose of that is to enable soldiers to cut out their own photographs and paste it there? A. No, I wouldn't understand that.

Q. You would not understand that? A. No. I can see readily how that can be done. In the other case—

*Edwin Holt Hughes—for Post Office—Cross.*

Q. It never occurred to you before that— A. I didn't see that until just now.

5131

Q. Now, now that you see it, do you see that obviously that is the purpose of it? A. Yes.

Q. I want to show you the one for September at page 72. Will you look at that one, please?

Do you see that is the same idea? A. Yes.

Q. And the one of the Marine in July, do you notice at the beginning of this text it says:

"Just take your best photograph and a pair of scissors (an old penknife will do), cut out your handsome pan and paste it in the blank space north of the collar and south of the cap."

5132

Do you see that? A. Yes.

Q. So that is a pretty clear direction as to what use, if any, is to be made of it, isn't it? A. The first sentence starts nicely.

Q. "Step right up, Devil Dog, don't keep the girls waiting." A. Yes.

Q. Now, come to the second sentence. Don't you see that tells us what to do, "Just take your best photograph and a pair of scissors"— A. Yes.

Q. That is relatively clear, isn't it? A. Yes.

Q. Do you find anything indecent about that? A. There is a distinct picture, Mr. Bromley, a difference between that picture and the one you showed me.

5133

Q. I was trying to lead up to the next one. A. In this case it is not lead up, it is lead down.

Q. Do you find anything wrong about this? A. No, I wouldn't say anything particularly, certainly not in that "paste" business.

Q. Come to the next one, August. Did anyone call to your attention the fact that the same directions are contained over here at the left as follows:

*Edwin Holt Hughes—for Post Office—Cross.*

5134

"To be a Don Juan for a day, you need only paste your own likeness in the indicated blank space. A half-teaspoon of flour from the cook's galley and a drop of water will do the trick."

Did anyone call your attention to that before? A. It wouldn't have made any difference in my estimate of that picture, Mr. Bromley, if my attention had been called to it.

5135

Q. You see now that it is expressly for the purpose of enabling a sailor in the service to paste his photograph in that space. Did you see it? And the text goes on and says: "What you eventually decide to do with the seascape is your own problem. If you go in for whimsy, you might air-mail it to your family and tell them you're engaged."

Did you know that?

Now, having that called to your attention, that text, would you tell me just what it is that you think is indecent about it? A. I would rather not do it, Mr. Bromley.

Q. Why? A. I think the thing seems to me so obvious. It is a matter of location. It seems to me so obvious that I really do not care to go into any detail as to why I object to that.

5136

Q. Would you consider that if a sailor was on the bathing beach and took his girl and hoisted her on his shoulders and carried her around in that position, that would be inescapably indecent? A. A great deal of it would depend on his relation to that young lady, I should say.

Q. Suppose he just knew her as a girl friend. A. Well, that assumes presumably a fair amount of acquaintance-ship.

Q. You would judge that that would be a sufficient acquaintance so there wouldn't be any impropriety in carrying his girl friend around on his shoulders, would you? A. No, I wouldn't want my daughter to do it.

*Edwin Holt Hughes—for Post Office—Cross.*

Q. You wouldn't want your daughter to do it? A. No, sir.

5137

Q. Then do I understand the core of your objection to this is the fact that the girl is sitting on the man's shoulders?

A. No, that is not it. You know that is not it.

Q. I don't know what you are thinking about. A. All right, I do.

Q. You do? A. Yes.

Q. But you don't care to express it? A. No.

Q. Do you have the same reaction to this picture in the magazine Life, the one at the top of page 88, August 12, 1940, Respondent's Exhibit 91? A. No, I wouldn't have the same to that at all. I would say it is not the kind of thing I care for; between you and me, and it is not the kind of thing that I am accustomed to. Of course it may be I am just a nice old man.

5138

Q. I am sure you are that, sir. Nothing wrong about that? A. No. Probably you were brought up that way.

Q. I was, yes, sir. I take it that this picture in Life, you would not find anything indecent in it? A. No, I wouldn't use the word "indecent" with reference to that. Is Life in question?

Q. I just brought it into the question. A. Oh, I see. I thought maybe it was before the Court.

5139

Q. No, sir. A. Oh.

Q. Now, in the August issue at page 127, when you gave your testimony you knew, did you not, that that was a fashion picture and not a cartoon? A. I rather judged it was an advertisement, am I right about that?

Q. I think it could be properly described that way because if you will notice it says that if you will write in, it tells you where you will get the articles illustrated on that page. A. It says also concerning that, that "Esquire

*Edwin Holt Hughes—for Post Office—Cross.*

5140

will accept no responsibility for what may happen if male readers fail to tear off the bottom of this page before letting their female dependents see it." That is there, too, right there.

Q. You think that is an indecent reference, Bishop? A. I don't know what was in their minds. They thought that it was just as well to put it there.

Q. I don't think you really see what that means, do you, sir? A. I don't know.

5141

Q. Let me explain it to you. That is supposed to be a joke and it is telling the man, "You better tear off the bottom here because if you do tear it off, then your wife can't find where to send for those clothes and won't be buying clothes." That is all that means, Bishop. A. A very kindly thing to do for your wife. That was the intention, was it?

Q. It is a joke, yes. You did not find anything dirty about that, did you, sir? Did you? A. Oh, I bet you never thought about it that way, did you?

Q. Did you find anything indecent about that picture? A. Haven't I seen that one before?

5142

Q. I believe not (indicating a picture other than the one in the August issue). A. We have there again the same thing, haven't we, Mr. Bromley?

Q. No, I just showed it to you because it has the same warning at the bottom of the page. A. The wife is there. It says the same thing right there at the bottom. Is the gentleman holding her up, that other lady?

Q. Yes, that is right. A. Well, he wouldn't stand that long.

Q. He wouldn't stand that long? A. No, he wouldn't stand that long, that weight, no, not that weight. That is what he says, you know his wife wouldn't get tired doing that.



*Thomas Verner Moore—for Post Office—Direct.*

Q. So that is decent, is it? A. What?

Q. You say that is decent? A. I don't say that. That is your construction of it.

Q. Well, I put it in the form of a question. Is that perfectly decent? A. Well, I wouldn't want to say it was indecent; on the other hand, I don't see anything that resembles a high mind in it.

Mr. Bromley: That is all.

Mr. O'Brien: No further questions for Bishop Hughes, and may I have a minute and I will produce the next witness, who is in my room at this time.

(Witness excused.)

Chairman Myers: All right, we will recess for a few minutes.

(At this point a short recess was taken, after which the proceedings were resumed, as follows:)

Mr. O'Brien: I want to state to the Board that I am presenting Dr. Moore as a psychiatrist and not as a clergyman.

THOMAS VERNER MOORE, called as a witness by and on behalf of the Post Office Department, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien:*

Q. Will you state your full name for the record, please?

A. Thomas Verner Moore.

Q. And you are a Catholic priest, are you, Father Moore?

A. Yes.

*Thomas Verner Moore—for Post Office—Direct.*

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Q. Are you also a doctor of medicine? A. Yes.

Q. From what college did you receive that degree? A. Johns Hopkins, in 1915.

Q. Are you also a psychiatrist? A. Yes.

Q. Will you tell the Board what your background is as a psychiatrist? A. I am a member of the American Council for Neurology and Psychiatry, American Board of Neurology and Psychiatry, and since 1916 I have a license to practice in the District of Columbia and have had a clinic for problem children, first in the Providence Hospital from 1916 to 1937, and it was then transferred to the Catholic University and somewhat enlarged by a Rockefeller grant in 1939.

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So I have been dealing with the behavior problems of children and mental problems for adults during that period.

Q. Are you the head of any other organization, Father?

A. Head of the Department of Psychology and Psychiatry, Catholic University, and Prior at St. Anselm's Priory.

Q. Do you have many patients, Doctor? A. Well, in that time I have probably had 200 to 250 new patients in the course of a year.

Q. Each year? A. Yes. I might say that in the last war I was in the Medical Corps in France, captain and major in the Medical Corps, dealing with war neuroses.

5148

Q. Dr. Moore, have you at my request examined several issues of the magazine known as Esquire, from January to November, 1943? A. Yes.

Mr. O'Brien: May I explain this to the Board and Mr. Bromley? Dr. Moore has made a study of the terms which he intends to employ in his testimony here. He has prepared a statement which explains what he means by those terms in the light of various things which he has studied.

*Thomas Verner Moore—for Post Office—Direct.*

I would like the indulgence of the Board to be granted so he may make this statement preliminary to any testimony he may give.

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Mr. Bromley: I object to that as incompetent, irrelevant, and immaterial, and not competent procedure.

Chairman Myers: It may be a little irregular but it is for the purpose of explaining his position. Let him read his statement.

*By Mr. O'Brien:*

Q. You may read the statement, Doctor Moore. A. Why, when I was asked by the representatives of the United States Post Office to pass an opinion on obscenity of the journal known as Esquire, it seemed to me a matter of primary importance to find out just what first of all is meant by "obscene".

5150

If you are going to say a thing is obscene you must know what obscene means.

Secondly, having determined the concept of obscene, to find out whether or not why the magazine termed Esquire is obscene, so I made a little investigation of my own of the concept of obscenity.

The 71st Congress of the United States, the Second Session, published in Document 54, entitled "Obscene Literature", a list of all the states of the union on obscenity, but, in general there was no definition of the concept of obscene; and the League of Nations entered into the problem in its publication "Obscene Literature" and here again, however, though practically all the nations of the League had laws against obscene literature the word obscene in general was not defined.

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5152 I thought that this might mean that the word "obscene" would therefore have the sense that it is in ordinary use in the English language, so I turned to the meanings of the word in the English language.

The word comes to us from the Latin *obscenus* which means filth, with the accessory notion of loathsomeness, and in Latin pictures, scenes, gestures, and movements could be termed obscene because they suggest impure thoughts; and the New Standard Dictionary defines the word as follows:

5153 "Offensive to chastity, delicacy, or decency; expressing or presenting to the mind or view something that decency, delicacy and purity forbid to be exposed.

"Offensive to morals, indecent, impure.

Webster gives essentially the same definition:

"Offensive to chastity of mind or to modesty; expressing or presenting to the mind or view something that delicacy, purity and decency forbid to be exposed."

The new English dictionary edited by Sir James Murray, sometimes termed the Oxford Dictionary, gives two meanings of the word which has been in use since the 16th Century.

5154 First, "Offensive to the senses, taste or refinement". Secondly, "Offensive to modesty or decency, expressing or suggesting unchaste or lustful ideas."

Now, we might turn to some of the examples given in the documents above cited. The United States publication, that of the League of Nations, and the Colorado law thus describes obscene:

"All pictures of nude or partly nude men or women in indecent attitudes or positions; or which publishes, by pictures or descriptions indecent or immoral details of crime, vice, or immorality, calculated to corrupt morals, or to offend

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common decency, or to make vice and crime, immorality, and licentiousness attractive." 5155

Now, the English report in the League of Nations quoted Lord Chief Justice Cochrane as making the fact of obscenity dependent on whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort might fall.

I also looked into the legal book known as Ruling Case Law.

Mr. Bromley: Have you got the name of the case that the Lord Chief Justice cited? 5156

The Witness: Queen versus Hicklin, 1868,—L. R. B.

Mr. Bromley: You had it right there?

The Witness: Yes.

Ruling Case Law gives the following test of whether or not a publication or other article may be looked upon as obscene.

"The test ordinarily followed by the courts in determining whether a particular publication or other thing is obscene within the meaning of the statutes is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication or other article charged as being obscene may fall. Thus it has been held that where a publication or other article suggests to the young of either sex, or even to persons of more advanced years, thoughts of an impure or libidinous character, it is obscene." 5157

Now, from all this and the wording of the various laws we may say that there are three elements that may be spoken of as involving obscenity:

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First, vulgarity such as use of words and pictures in reference to sexual matters as would be offensive in ordinary good society of the country.

Second, a tendency to produce sexual excitement.

Third, a tendency to prepare the way for immoral and unlawful sexual acts and so to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.

Now, does the publication known as *Esquire* offend in any or all of these ways?

5159

First, as to vulgarity. As examples of vulgarity of words which to some minds would also be stimulus to sexual emotion, one might cite as an example:

The first and last verses in the poem "Benedicts, Awake!" in the January, 1943, issue, page 45.

The article: "Those Star and Garter Blues" on page 83 of the same issue. One phrase in this article expresses the general trend of the obscenity in *Esquire*. It suggests what it doesn't say.

Then, the February issue, 1943, "The Unsinkable Sailor", page 95.

For mere offensive vulgarity see "Dog's Worst Friend", July, 1943, page 141.

5160

Now, in regard to mere vulgarity I might say that a refinement of language and conduct is a valuable acquisition of a personality.

A magazine such as this falling into the hands of adolescents will tend to lead them to use vulgar language and whatever one might think about cursing and swearing, they might object to it as a nuisance, why so it seems to me that *Esquire* is a publication disseminating this manner of speech.



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which has a tendency to produce sexual excitement.

As an example of this, one might cite the Varga girl calendar of months, pages 97 to 108 in the January, 1943, *Esquire*.

Again, the advertisement on page 9, the March issue, 1943, of Thorne Smith's three wittiest novels, is intended to arouse the sexual curiosity of adolescents or the susceptible adult, and stimulate him to seek sexual satisfaction in reading about characters that are, as is said, completely uninhibited in their passionate pranks, and it is said "that no writer of genius has ventured to create such thrillingly improper situations."

Then, a phrase in the article, "The Fall of the Flattering Word", page 68, March, 1943, expressing the specific purpose of many of the pictures in *Esquire*: "Clothes that reveal and conceal so captivantly that men will be driven mad with desire."

Now, every issue in 1943 has one or more pictures in which this is attempted.

Now, in regard to the tendency to produce sexual excitement, it would not suffice for somebody to say "I find these pictures perfectly innocent and beautiful."

The question is not whether or not these pictures in the hands of many normal individuals would produce sexual excitement.

Thus it was found in studying the effects of motion pictures, that in estimating the probable effect of motion pictures on a youthful audience, the adult experience doing observation is not an adequate basis since the response of the younger ages is likely to be much more intense in the tragic scenes, and

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under the age of sixteen much more intense in the amorous scenes.

Adolescents react much more violently to pictures of nude women and scenes of a sexual character than either little children or adults. Some work has been done on this matter in regard to reading by Diserens and Wood, who found that ten male graduates at the university were unequally affected by literature with a sex connotation, some were definitely affected as revealed by their introspections and by the record of the respiration and of the pulse.

5165

When one looks at the magazine *Esquire* he cannot escape the conclusion that the chief selling attraction in this periodical is its sexual appeal. It lives by nourishing a sexual craving of more or less susceptible individuals.

It doesn't teach art or science or anything useful to humanity.

Now, thirdly, though this is not required in some of the definitions of obscenity, obscenity has a tendency to prepare the way for immoral and unlawful sexual acts, and so to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this character might fall.

5166

In regard to the corrupting tendency of pictures seen, we may say that even passing remarks or incidents in books of good literature, may be the source of immoral and unfortunate development in a susceptible individual.

Thus Francis Thompson from reading DeQuincey's "Confessions of an Opium Eater" started on a career or something that resulted in his becoming a morphine addict.

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It would not be wise nor possible to proscribe all literature, but we should proscribe a magazine whose chief selling point is the sexual excitement it arouses, which will stimulate the desire to experience the reality of what was seen in the pictures.

5167

There has been some empirical evidence thrown on the matter by experimental studies. Autobiographical accounts have shown the following:

Moving pictures lead adolescents to imitate love techniques seen on the screen. They suggest the taking of sex liberties not thought of before seeing the picture.

5168

They raise sex excitement in adolescents and lead to taking or allowing liberties on the way home which otherwise would not have been taken or would not have been allowed.

And so, the arousing of sex feelings is quite evident in regard to Esquire.

Esquire on page 10 frequently presents letters from readers, and one of these, a soldier, tells of how he has got his room all pasted over with Varga girls.

Now, the basis of that is the sexual pleasure that is derived from it, and as I pointed out in various ways, the production of sexual emotions by pictures and readings leads to a desire to sample, and so the magazine may be accused of corrupting the minds of youth.

5169

Q. Dr. Moore, would you consider—

Mr. Bromley: Just a minute. I move to strike out the entire answer as incompetent, immaterial, and ir-

*Thomas Verner Moore—for Post Office—Cross.*

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relevant, full of hearsay, and conclusory, and it is improper—

Chairman Myers: It may be subject to that criticism; Mr. Bromley, but let it stay in the record.

*By Mr. O'Brien:*

Q. Would you consider the matter that you have read in Esquire, Dr. Moore, information of a public character, proper for dissemination throughout the nation? A. Most certainly not.

5171

Q. Would you state in a sentence whether or not you consider these issues of Esquire which you have examined, decent or indecent? A. They are indecent.

Mr. O'Brien: Your witness.

*Cross Examination by Mr. Bromley:*

Q. You are a Benedictine monk, aren't you? A. Yes, sir (smiling).

Q. Is that funny? A. Not a bit.

5172

Q. Do you know Dr. Clements C. Fry? A. Not personally, no. I may have met him. I meet a great many people in the meetings and I probably met him sometime. I am not quite sure.

Q. Do you know his reputation? A. Not so well.

Q. What is it? A. I don't know. I don't think he is a member of the American Board. I am not quite sure of that, though.

Q. What about his reputation, do you know? A. I would not be prepared to state anything about his reputation. I won't question the reputation of other psychiatrists in public.

*Thomas Verner Moore—for Post Office—Cross.*

Q. Are you familiar with the American Journal of Psychiatry? A. Yes, sir.

5173

Q. Do you see in the September 1943 issue where there is a review of a book called "Mental Health in College" by Clements C. Fry? A. I haven't read that, no.

Q. Do you take this magazine? A. I do.

Q. Would you read the review, please? A. (After examining review) Well, I glanced over it.

Q. Does that refresh your recollection as to Dr. Fry's reputation? A. Well, it mentions that he is there, he is a psychiatrist, yes.

Q. A perfectly reputable psychiatrist? A. Oh, I wouldn't cast a reflection upon anybody's reputation.

5174

Q. You know that he possesses, by reputation at least, an acute knowledge of youth problems? A. I do; probably he does.

Q. Do you know Dr. Kenneth Tillotson? A. I have heard of him, yes.

Q. What do you know about his reputation? A. I haven't gone into that either.

Q. You don't know anything about him? A. No. I am making no statement of people's reputations.

Q. Now, the purport of your statement that you just finished reading is to condemn the whole magazine Esquire, is it, and each one of the eleven issues? A. Why, yes, I would say that there is something more or less objectionable in each one of the eleven issues that I saw.

5175

Q. Well, I say the purport of your statement that you have just finished making is to condemn the whole magazine and each of the eleven issues? A. I wouldn't say that I condemn everything in each one of the eleven issues, no.

Q. How long did you study the eleven issues? A. Why, I took a couple of days to look them over.

*Thomas Verner Moore—for Post Office—Cross.*

5176

Q. When did you start? A. Oh, about ten days ago.

Q. How much time have you spent altogether looking at them? A. Oh, some hours.

Q. How many? A. Several.

Q. How many would "several" be? A. Why, in point of time it was less than ten; I would say two or three.

Q. You mean two or three hours? A. Two or three hours, something like that.

Q. Are you familiar with the reputation of Sholem Asch? A. No.

Q. Did you ever hear of him? A. No.

5177

Q. Did you ever hear of Theodore Dreiser? A. No.

Q. You never heard of him? A. No.

Q. Did you ever hear of John Dos Passos? A. No.

Q. Never heard of him? A. No.

Q. Did you ever hear of Havelock Ellis? A. Yes.

Q. Did you ever hear of Leon Feuchtwanger? A. No.

Q. Did you ever hear of F. Scott Fitzgerald? A. No.

Q. Did you ever hear of Maxim Gorky? A. Yes.

Q. Did you ever hear of Ernest Hemingway? A. No.

Q. Did you ever hear of D. H. Lawrence? A. No.

Q. Did you ever hear of Thomas Mann? A. The name is a little bit familiar.

5178

Q. You don't know who he is, though? A. No.

Q. Did you ever hear of Maurice Maeterlinck? A. No.

Q. Did you ever hear of Andre Maurois? A. No.

Q. I spell it on account of my pronunciation: M-a-u-r-o-i-s.  
A. No.

Q. Did you ever hear of Franz Molnar? A. No.

Q. Did you ever hear of Luigi Pirandello? A. No.

Q. Did you ever hear of Jacob Wassermann? A. No.

Q. Did you ever hear of Arnold Zweig? A. No.

Q. Did you ever hear of Thomas Wolfe? A. No.



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Q. Did you ever hear of John Steinbeck? A. No.

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Q. So the fact that all of these gentlemen whom I have named have been contributors to Esquire would mean nothing to you? A. It would mean very little. I would have to examine what they wrote.

Q. Now, in the January issue did you read the article by Joseph Wechsberg, entitled "School for Saboteurs"? A. I remember the title but I didn't read it.

Q. You didn't read it? A. No.

Q. Did you read the article, "Japan's Mein Kampf"? A. No.

Q. By Curt Riess? A. No.

5180

Q. Did you ever hear of Curt Riess? A. No.

Q. Did you read the article, "West Point's First Captain," by Thom Yates? A. No.

Q. Did you read "The Unholy Horatio Alger," by Stewart Holbrook? A. No.

Q. Did you read "The Future of Air Power," by Robert W. Marks? A. No.

Q. Did you read "31 Lessons for Brass Hats and Bureaucrats," by William B. Ziff? A. No.

Q. Did you ever hear of William B. Ziff? A. No.

Q. What did you read in the January issue? A. I have given you the reference—those references I have given you there, I have looked into. Now, others I might have glanced through. I did not attempt to read the thing all through because my idea was to find out something, not about every article in it, but my point of view was to find out whether or not some of the things were definitely obscene and that the magazine as a whole gives an impression of obscenity.

5181

Q. Well, your purpose was to see if you couldn't find anything obscene, wasn't it? A. Naturally yes, that is what I was to testify on. I was not testifying on the literary value of the other articles.

*Thomas Verner Moore—for Post Office—Cross.*

5182 Q. So you made no investigation of them whatsoever, did you? A. I would say no. I was looking for obscenity, and if I found nothing I wouldn't have testified, and if I found obscenity, why that was sufficient for me.

Q. It didn't make any difference to you whether the magazine as a whole was good or not? A. If there was enough obscenity to make it objectionable, why, it might have had a number of other things in it but that wouldn't make any difference.

5183 Q. So I take it, in the January issue, at least, you did not read any part of any article, story, or feature of other consideration? A. I wouldn't say that. If I refer to that in that paper, why, I have done so.

Q. Well, will you pick out for me what you read? Here is the January issue. A. Somebody walked off with my notes.

Q. Well, can't you pick them out without a note about it? A. No.

Q. You can't do it? A. No; my memory—a man's notes—

Mr. O'Brien: Now, if the Board please, I gave to Dr. Moore all of these items with the captions or names of the articles.

Mr. Bromley: He doesn't want that, he wants his notes.

5184 Mr. O'Brien: Just a minute.

The Witness: Well, I glanced over all those captions that he gave me; I glanced through them. I looked at every single one of those.

*By Mr. Bromley:*

Q. But you couldn't tell us by looking at this copy of the magazine, and others, if you had to, without a note?

A. Oh, I might possibly, yes.

*Thomas Verner Moore—for Post Office—Cross.*

Q. Would you mind doing it?

5185

Mr. O'Brien: I think you should have him use his notes to refresh his memory and also to save time.

The Witness: I have a picture.

*By Mr. Bromley:*

Q. You have a picture? A. Yes.

Q. What page? A. 89 to 90.

Q. 89 to 90? A. No, 84 to 89, I think it is.

Mr. O'Brien: Here are your notes, Father (handing notes to witness).

5186

*By Mr. Bromley:*

Q. You refer to the picture on page 84? A. Yes.

Q. Between 84 and 89, is that right? A. Yes.

Q. Now, do you find that to be indecent? A. I do, a suggestive attitude, I feel that in adolescents that it would lead to sexual excitement. I feel quite sure it would.

Q. Now, what else can you find in that magazine? Can't you do it without your notes, Father? A. I have a note here on "Benedicts Awake" in the January 1943 issue, page 45.

5187

Q. You are now reading from your notes? A. Yes, sir.

Q. Couldn't you do it without your notes, Father? A. Probably not. And the article, "Those Star and Garter Blues," on page 83 of the same issue.

Q. Again you are reading from your notes, aren't you, Father? A. Yes, sir. These notes are refreshing my memory.

*Thomas Verner Moore—for Post Office—Cross.*

5188

Q. Do you think you could point out anything in the January issue that you don't have in your notes? A. Oh, if I started to study it, yes, I could find some other things, perhaps more things. I didn't put everything in these notes here that I found objectionable.

Q. Did you know that the picture that you selected on page 84 was not complained about by the Post Office? A. That would not be necessary. I might look upon that as obscene on account of its attitude and the general picture. I feel quite certain that in the minds of many adolescents that that would lead to sexual excitement.

5189

Q. Is there any reference to the picture on page 84 in your notes? A. No. I did not attempt to get all things in my notes, but just samples of obscenity. It would have been a long document if I picked out everything.

Mr. Bromley: I would like to have his notes marked for identification.

Mr. O'Brien: Well, I don't know whether he has to put his notes in evidence or not. It depends on whether or not the witness wants to use his notes to refresh his recollection or whether he is willing to have them identified or put into the record.

5190

Chairman Myers: Well, he has used them for testimony. I expect everything that he has got in his notes is in the record by his own statement anyway.

Have you any objection to those notes being in the record?

The Witness: Not the slightest.

Chairman Myers: Let them go in.

Mr. O'Brien: I assume the Doctor will be allowed to use the notes to refresh his memory.

*Thomas Verner Moore—for Post Office—Cross.*

Chairman Myers: Oh, yes. They are just marked for identification.

5191

(The document above referred to was marked Respondent's Exhibit No. 151 for identification.)

*By Mr. Bromley:*

Q. Now, may I see the notes, Doctor? A. Delighted (handing Exhibit 151 for identification to Mr. Bromley.)

Q. What is your opinion of this joke, Father:

"After two days in the hospital I took a turn for the nurse". A. Well, it might be suggestive. It is not a joke that you would like to see in polite society. It wouldn't indicate a very great refinement of manners.

5192

Q. Was that your attitude on all the jokes in the "Gold-bricking" feature of these eleven issues? A. I wouldn't say, of the jokes, no.

Q. Can you now recall what joke as to which your attitude was different? A. No. I would have to look them over one by one and tell you.

Q. Is there anything in your notes that would help you in that respect? A. I don't think so. I didn't pay very much attention to the jokes.

5193

Mr. O'Brien: Just a minute. I think the witness is entitled to use his his notes according to the ruling of the Board.

Mr. Bromley: Yes. He says there is nothing in them.

Chairman Myers: The witness says there is nothing in them.

Mr. O'Brien: I see.

*Thomas Verner Moore—for Post Office—Cross.*

5194 *By Mr. Bromley:*

Q. Well, in other words, there was nothing about the Army jokes which appear in the magazine that caused you to be concerned, was there? A. I wouldn't say that. I will say I didn't read every copy all the way through, and I am not able to speak about things I did not read, about whether they are obscene or not, but I did find things that were obscene.

Q. In the Army jokes? A. No, I say in the magazine.

Q. I am talking about the Army jokes.

5195

Mr. O'Brien: I suggest the witness should be confronted with the Army jokes.

*By Mr. Bromley:*

Q. Can you remember any Army joke that you found obscene? A. No, but it doesn't follow that there are none there.

Q. Doesn't it follow that you did not see any that you thought obscene? A. Well, it might be that I didn't read any.

Q. Is that the fact?

5196

Mr. O'Brien: Now, there is no characterization in any *Esquire* with the title Army jokes. That is just counsel's statement.

Mr. Bromley: That is right.

Mr. O'Brien: I think the jokes to which counsel refers should be shown to the witness.

Mr. Bromley: That is right.

Chairman Myers: That is right.



*Thomas Verner Moore—for Post Office—Cross.*

Mr. Bromley: I refer to the two-page spread called "Goldbricking with Esquire".

5197

*By Mr. Bromley:*

Q. Do you recall that, Father? That question is a memory test.

Q. Now, were there any jokes in any of the two page spreads that you took objection to? A. I think there were but I would have to look at them to see.

Q. You can't tell now from memory? A. No.

Q. There is nothing in your notes about that? A. No. I only noted some of the things. I didn't put everything in my notes. I thought it was sufficient for me to cite a few examples.

5198

Q. Did you notice this joke:

"She: 'Would you like to see where I was operated on for appendicitis?'"

"He: 'No, I hate hospitals.'"

A. I don't remember that.

Q. Would you call that indecent? A. I don't get the point. Perhaps if I got it I would.

Q. Well, you don't call it indecent, then? A. Perhaps because I don't see the point. I noticed several things in there I didn't see the point of, some of the things that have been objected to by the Army I didn't quite see the point.

5199

Q. Some things that have been objected to by the Army? A. By the Post Office, I didn't quite see the point. But perhaps if I had made a more careful study, I would have found out.

Q. You didn't do that? A. You didn't do that?

Q. Did you do anything in that respect? A. No. O

*Thomas Verner Moore—for Post Office—Cross.*

5200

Q. Do you see anything wrong with this joke:

"Dear Doctor Diddle: I am a beautiful brunet but I have a serious problem. Every time I take a bath I blush. What shall I do? . . . Twenty.

"Dear Twenty: Before you undress put on a blind-fold."

A. Well, that is not seriously objectionable, no; but it is not what you would exactly call refinement.

5201

Q. You would call it indelicate, would you? A. Yes, I think so, but I wouldn't exclude a thing from the mails on account of that, but if the magazine is just chock-full of these indelicacies and leading adolescents to develop indelicacies in speech and conduct, it might be desirable to exclude it from the mail. That is what I would say.

Q. Turn to the February issue, if you please, Father. That is an issue which is just chock-full of indelicacies? A. I don't seem to have cited anything from the February issue.

Q. That means then that you gave that a clean bill of health? A. Not a bit of it.

Q. Not a bit of it? A. No.

5202

Mr. O'Brien: Well, just a moment. I think the witness forgets that he has cited "The Unsinkable Sailor" from the February issue.

The Witness: Was that in there? Yes. "The Unsinkable Sailor" is rather indecent.

*By Mr. Bromley:*

Q. Is that again an indelicate reference? A. Indelicate and indecent too. It might call up some sexual excitement in the adult. And very indelicate language.

*Thomas Verner Moore—for Post Office—Cross.*

Q. Now, you said that the February issue, as I understand you, was chock-full of these indelicacies or indecencies? A. No, I didn't say that. 5203

Q. You didn't? A. No.

Q. Well, it is not, is it? A. I really don't know, it probably has a good many.

Q. Well, is it chock-full of them? A. What do you mean chock-full?

Q. What do you mean? A. Why, a number of—some fifteen or twenty.

Mr. O'Brien: I object to asking the witness for the definition of a term which I think counsel used. 5204

Chairman Myers: No, the witness used it himself.

*By Mr. Bromley:*

Q. Now, you did not mean to leave the impression on this Board that any one of these issues was chock-full of indelicacies or indecencies, do you? A. I would like to leave the impression on the Board that any issue has a number of indelicacies and has a number of obscenities. Now, I made no attempt to find out how many but I thought it sufficient to cite samples. I did not know that it would be necessary to get a mathematical proportion. 5205

Q. What you wanted to do was to help the Post Office in convincing this Board— A. No.

Q. You haven't heard me. You would just as soon answer without a question, wouldn't you? A. No.

Mr. O'Brien: Now, I object to that and move that it be stricken. He started to answer.

Chairman Myers: That may go out.

The Witness: Ask your question.

*Thomas Verner Moore—for Post Office—Cross.*

*By Mr. Bromley:*

Q. You are not going to ask me any questions? A. I say, you ask your question; go ahead.

Q. Now, what you want to do is help persuade this Board that this magazine ought to be deprived of its second-class rates? A. Not unless it be found obscene.

Q. But your purpose in your testimony is to persuade this Board that this magazine ought to be deprived of its second-class rates, isn't it? A. My purpose is to declare whether it is obscene or not. I haven't anything to do with depriving you of the right—of the rate, that is a question of law.

My question is to find out whether, as an expert psychiatrist, looking upon this thing, whether it is obscene.

Q. Haven't you said right along in your statement that you did not think this magazine should go through the mails? A. Yes, that is true; but that is not my immediate purpose. My immediate purpose is to give the definition of obscenity and see whether it applies to it or not.

Q. Well, do you think it should go through the mails or should not? A. No, I don't; but I don't believe my testimony on the matter of going through the mails has anything to do with the issue.

Q. You have looked at the law pretty carefully before you came in here, haven't you? A. Naturally, I wanted to find out what obscenity meant.

Q. You think it would be all right for this magazine to go through the mail at fourth-class rates, but not at the second-class rates do you? A. No, I don't know what you mean by the fourth-class rates or the second-class rates. I am merely confining it to the question of obscenity; that the magazine is obscene.

*Thomas Verner Moore—for Post Office—Cross.*

Q. When you use the word "obscene", as I understand your definition, you include delicacy? A. Yes. That seems to be included in the concept in English and in many of the laws which mention obscenity but do not define it, so in this country and in foreign countries without a definition, in all probability the common concept of obscenity is one which the laws have in mind.

5209

Q. And that would include bad taste too, would it? A. I think it would.

Q. That would include vulgarity too, would it? A. I think so. I mean vulgarity of an obscene character.

Q. So you would say that probably the term included anything that ought not to be accepted into polite society? A. No, I don't think so. I don't think so; that is an incidental issue. The main thing, I believe in the law, is the tendency to produce sexual excitement, not necessarily in my mind or somebody else's mind or someone's mind, but in the mind of adolescents or others into whose hands this magazine might fall. That is true of a large number of cases.

5210

Q. Now, are you familiar with the pictures in Life which have been introduced in this case concerning the birth of a baby, published in 1938? A. Well, why I didn't know I could pass upon Life as obscene or not obscene because I did not assume that I should pass upon Life.

5211

Q. Did you hear the question I asked you? A. I did.

Q. Are you familiar with the pictures? A. I am not.

Q. Will you look at them? A. I would be delighted.

Q. Are they decent or indecent? A. Well now, personally I wouldn't see anything indecent in that and it might be of importance in teaching something about the birth of children, pregnancy and so forth.

Q. You see nothing obscene about the pictures, do you, Father? A. I wouldn't object to that, no.

*Thomas Verner Moore—for Post Office—Cross.*

5212

Chairman Myers: What is the number of that Exhibit?

Mr. Harding: It has not been offered in evidence.

Mr. O'Brien: I move to strike out the question and answer then, if it is not in evidence.

Chairman Myers: It goes to the credibility of the witness.

Mr. Bromley: Will you mark for identification the issue of Life for April 11, 1938?

5213

(The document above referred to was marked Respondent's Exhibit No. 152 for identification.)

Mr. Bromley: I offer it in evidence.

Mr. O'Brien: What page is that, Mr. Bromley?

Mr. Bromley: 34.

*By Mr. Bromley:*

Q. What are the N. O. D. L. lists?

Mr. Cargill: If that is in evidence let us see it.

The Witness: What?

5214

*By Mr. Bromley:*

Q. I said what are the N. O. D. L. lists? A. N. O. D. L. I don't know.

Q. You never heard of them? A. No.

Q. Did you ever hear of the National Organization of Decent Literature? A. No.

Q. Never did? A. No.

Q. Did you ever hear of The Acolyte? A. Yes.



*Thomas Verner Moore—for Post Office—Cross.*

Q. What is that? A. Well, it is a Catholic paper. It goes around to many of the parishes.

5215

Q. Published by Bishop Noll in Fort Wayne? A. I don't know.

Q. Do you ever read it? A. Very seldom.

Q. I show you Exhibit 17-A for identification and ask you if that refreshes your recollection about the N. O. D. L. list? A. It does not.

Q. You never saw that or heard of it before? A. No.

Q. Do you believe or don't you that the War Department is protecting the morals of our servicemen?

Mr. O'Brien: Now, I object to that question as totally irrelevant.

5216

Chairman Myers: What was the question?

(Question read.)

Chairman Myers: That is just a question on belief and I think the objection will be sustained.

*By Mr. Bromley:*

Q. Do you know that the magazine Esquire is being furnished to our soldiers and marines by the War and Navy Departments? A. I didn't know that. I regret it very much.

5217

Q. Did you know that it has—that it is a widespread practice on the part of our servicemen to use these Varga girl pictures to pin up in their barracks and their machines and their planes and their submarines? A. Why, from some of the letters, one of the boys spoke of doing that.

Q. Did you know that that practice—

Mr. O'Brien: I object to the question—just a minute—and the answer: "Did you know that there is

*Thomas Verner Moore—for Post Office—Cross.*

5218

a widespread practice". I will admit that some people do it but there is no evidence in here that it is a widespread practice.

Chairman Myers. Well, his answer was as to what he knew; that it was only as to one letter that he got.

*By Mr. Bromley:*

Q. Did you know that this practice of pinning up these girls or letting soldiers have them for pin-up use is one that is encouraged by the services?

5219

Mr. O'Brien: I object to that. There is nothing to show that.

Chairman Myers: Well, that is a little different question from the other one. Objection overruled.

Read the question for him, Mr. Reporter.

(Question read.)

The Witness: I didn't know that.

*By Mr. Bromley:*

5220

Q. Did you know that men like General MacArthur and Donald Nelson were subscribers to this magazine? A. No. I didn't know that.

Q. Would it surprise you to know that the Army has just ordered 73,000 copies of Esquire to be printed on special thin paper to be shipped overseas to hospitals and bases for our fighting men? A. I didn't know that.

Q. Did you know that the Quartermaster Division has just completed arrangements with the publishers of Esquire to supply a miniature book reproducing cartoons in Esquire

*Thomas Verner Moore—for Post Office—Cross.*

for inclusion in the K ration package sent to the armed forces? A. No.

5221

Q. In various parts of the world? A. No.

Q. Are you familiar with some of the camp papers that are being put out today by the soldiers and sailors in camp? A. Not at all.

Q. Would the fact of the attitude of the services toward this material which has been indicated in my questions affect your opinion, Father? A. No, it wouldn't.

Q. You would deplore rather than approve that? A. I would.

Q. Would you? A. I would, unquestionably.

5222

Q. You would think it was bad for the men? A. Yes.

Q. What is your opinion of this cartoon, please, sir (handing to witness)? A. Well, it is not so bad.

Q. Well, is it indecent, indelicate, immoral? A. Not seriously.

Q. You would have no objection to that, then, would you? A. That alone, no.

Mr. Bromley: I offer it in evidence.

(The document above referred to was marked Respondent's Exhibit No. 153 for identification.)

5223

Mr. Bromley: This is a Marine Corps cartoon showing a marine on a South Pacific island.

Mr. O'Brien: I object to the description of it. It is in evidence and speaks for itself or if it is admitted in evidence.

Chairman Myers: Let Mr. O'Brien see it.

Mr. Bromley: Yes (handing document to Mr. O'Brien).

*Thomas Verner Moore—for Post Office—Cross.*

5224

Mr. O'Brien: I have no objection to the admission of this into evidence, but I object to its description.

Chairman Myers: It may be admitted.

(The document heretofore marked Respondent's Exhibit No. 153 for identification was received in evidence.)

5225

Mr. Bromley: I want to call the Board's attention, if I can get away with it with Mr. O'Brien, to what is printed on the back side of it.

Mr. O'Brien: That was not exhibited to the witness and certainly was not even offered in evidence and neither what was printed on the back side of it.

Mr. Bromley: You just used "backside."

Mr. O'Brien: I am using your term, Mr. Bromley, and I know that you are the soul of decency.

Mr. Bromley: Thank you.

*By Mr. Bromley:*

5226

Q. What is your opinion of this picture, Father? A. Well, some of these pictures, you know, are a good deal like this: Suppose that I was asked to give an opinion upon a fellow breaking the speed law and he was rushing to Pennsylvania at 60 miles an hour? I would say that he broke the speed law, and then there would be some of the fellows going a little under the speed law, and there, under the circumstances, I might get mixed up and wouldn't be able to say whether they were breaking the speed law, but I would think that Esquire certainly broke the speed law.

Now, some of those are on the border line and it is hard to say whether they are breaking the speed law or not.

*Thomas Verner Moore—for Post Office—Cross.*

*By Mr. Bromley:*

5227

Q. Now, would you say that if this thing were being done and that it was being accepted that maybe it was you that was out of step? A. It is not a question of who is out of step; it is a question of whether or not, in my opinion, Esquire in the minds of adolescents reading and seeing it, would arouse them sexually and I think that it would.

Q. Is that your chief objection to it, that it would arouse sexuality? A. Yes, and by their being stimulated to sampling.

Q. And you think that picture which I have just showed you, Respondent's Exhibit 20, would have no such tendency? A. Perhaps it might. One of those border-line things, don't you know.

5228

Q. You find this naked woman a border-line thing, do you? A. A good many shadows there, don't you know.

Q. Was it a question of shadows? A. Possibly, concealed some by the arms.

Q. If you have a naked woman whose erogenous parts are concealed by her arms, the picture is all right? A. Not necessarily.

Q. It is not indecent then, is it? A. Nudity in itself does not constitute obscenity.

Q. It is exposure— A. It is—

5229

Mr. O'Brien: Let him answer.

Mr. Bromley: Oh, I was pressing, too anxious.

The Witness: An individual in a lascivious attitude, lying prone and more or less exposed on a sofa, and so forth, might be much more obscene than a partially exposed picture taken in a bath, don't you know.

*Thomas Verner Moore—for Post Office—Cross.*

5230

*By Mr. Bromley:*

Q. Did you notice any Varga girls on sofas? A. Yes.

Q. You did? A. You showed me one just now. I think it was in the January issue.

Q. You refer to this one, don't you? A. Yes.

Q. You think that is a Varga girl, do you? A. I don't know whether you call it a Varga girl or not. It is one of the girls in Esquire. Perhaps not all the girls in Esquire are Varga girls.

It is an obscene picture, though, whatever you call it. I won't specify it as a Varga girl.

5231

Q. You mean to change your testimony that it is a Varga girl? A. No, no, no, no. The question is whether it is obscene or not, not whether it is Varga.

Q. My question was, could you point out a Varga girl that was lying on a couch. A. I don't know about that.

Q. What do you say about the decency or indecency of this photograph? A. It is rather indecent, I should say.

Q. That is Respondent's Exhibit 130, a picture from PM. What do you say about the decency or indecency of that nude picture? [Referring to Respondent's Exhibit 23.] A. There is again a question of one of those border-line things, obscured by a whole lot of shadows. It is not exactly a decent thing.

5232

Q. Is it decent or indecent? A. Border-line.

Q. You wouldn't say which? A. I say it is border-line. Is a man tall or short? Some you can't exactly say. Some you can say they are tall. Esquire is decidedly tall.

Q. But this is a border-line? A. A border-line, I think.

Mr. Bromley: I have been referring to Respondent's Exhibit 23, if the Board please.



*Thomas Verner Moore—for Post Office—Cross.*

*By Mr. Bromley:*

5233

Q. What do you say about this girl in the bathing suit?

A. That is somewhat indecent and suggestive. It leans to the indecent side.

Q. That is Respondent's Exhibit 24.

You recognize that as an advertisement of a bathing suit, don't you? A. Yes; that doesn't sanctify it, though.

Q. What do you say about Exhibit 131, this picture? A. This is rather obscene.

Q. What do you say about Exhibit 135, this picture? A. Well, that is one of those things that occur in life and on the stage. It is not exactly a desirable thing, it is another border-line case.

5234

Q. What do you say about this young lady on the beach, Exhibit 134? A. That is another border-line affair.

Q. Is she [referring to Exhibit 133], a border-line affair? A. A little bit over.

Q. You would consider that indecent? A. A little bit, yes.

Q. The last reference was to Exhibit 133.

I want you to look at this Exhibit 53, being pictures of Margie Hart, the strip-teaser, the top one at the top of page 49. Is that decent or indecent? A. Oh, a little bit border-line.

5235

Q. What about the left-hand one at the bottom of page 50? A. A border-line.

Q. The right-hand bottom of page 51? A. Border-line.

Q. When you say "border-line," your opinion is that they are not indecent. Is that right? A. I wouldn't say that. Is a man tall or short?

Q. You got that one off a while ago. A. I am sticking to it.

Q. Are these decent or indecent? A. Border-line.

*Thomas Verner Moore—for Post Office—Cross.*

5236

Q. That doesn't make any sense to me, Father. A. Well, it is good English.

Q. You wouldn't tell us whether it is so close to one or the other side that it might be classified on one side? A. I might be guilty of perjury if I say it is one way when it isn't.

Q. Are there a great many of these pictures that you cannot tell whether they are decent or indecent? A. Quite a number. Some are in Esquire too. But some in Esquire are certainly indecent.

5237

Mr. Bromley: The ones which he cannot classify, if the Board please, are these two nearly naked women at the bottom, Margie Hart, the strip teaser.

Mr. O'Brien: I object to the description. I think the exhibit will speak for itself as to what it is.

Chairman Myers: What exhibit is that?

Mr. Bromley: Exhibit 53.

Mr. O'Brien: I object to the introduction of the text on the back of Exhibit 153, which was not exhibited to the witness, and begins, "The Master Manure or Marine's Dream." I don't think that is proper to put in this record as a cross examination exhibit.

5238

Chairman Myers: It is part of the exhibit.

Mr. Bromley: You mean the Marine Corps has something about manure in it? "Menu" is what I call it.

Mr. O'Brien: There is another word right after it.

Chairman Myers: It is "Menu—or Marine's Dream."

Mr. Bromley: Now, Mr. O'Brien, you have read "Menu", which is a separate word, and "Or", which

*Thomas Verner Moore—for Post Office—Cross.*

is a separate word, as "Manure", haven't you? It is a good summation of your attitude.

5239

Mr. O'Brien: I read it as written here, with a dash between the two words, as it is intended to be read by the person who wrote the text. I am not summing up my attitude on that at all. I will sum it up later for the satisfaction of counsel—or dissatisfaction.

*By Mr. Bromley:*

Q. In Exhibit 57 I call your attention to pictures on page 55. Are those decent or indecent? A. They are not so bad.

524

Q. Again you can't say which? A. It is a little, perhaps, on the under side rather than the over side.

Q. Are they decent or indecent? A. Oh, I wouldn't call them definitely decent, no.

Q. Would you call them definitely indecent? A. Nor definitely indecent, but perhaps a little less indecent than many you have presented.

Q. If they are less indecent, you mean they are decent, don't you? A. There again, on the question of border-line. Some things you are doubtful and can't say you are certain of, and I don't want to go on the witness stand and say I am certain about anything when I am uncertain.

524

Q. So your opinion on this is that you are uncertain? A. Uncertain.

Q. Does that apply to the next pages of the exhibit, pages 56 and 57? A. Why, I don't see anything indecent about those.

Q. You don't? A. No, except perhaps that the top one there might be. The top one was a little indecent.

*Thomas Verner Moore—for Post Office—Cross.*

5242

Q. You refer to the one where the girl is stretched out on a blanket with just a pair of tights on? A. Yes.

Q. That is indecent? A. A little bit.

Q. Is that the only one of the six which is even a little indecent, in your opinion? A. I should say so.

Q. What about the five pictures on the next page, 58?

A. They are also rather indecent.

Mr. Bromley: This is the Suntan spread which I have shown to the Board many times in Life.

Chairman Myers: What exhibit is that?

5243

Mr. Bromley: 57. I put it in the record when I started.

*By Mr. Bromley:*

Q. And Exhibit 56, being pictures of Carole Landis, what can you say about the upper right-hand one? A. That is a border line again.

Q. You can't tell? A. No.

Q. What do you say about the one at the bottom of the page? A. I would put that towards the border line.

Q. You can't tell about that one either? A. No.

5244

Mr. Bromley: These two are the Carole Landis ones which we had before.

*By Mr. Bromley:*

Q. What about these three pictures on pages 60 and 61? Are they decent or indecent? A. They are somewhat indecent, I would say, but not seriously so like some of the ones in Esquire.

*Thomas Verner Moore—for Post Office—Cross.*

Q. What about the one on page 62? A. I wouldn't call this indecent.

5245

Mr. O'Brien: I suggest the witness should be cross examined on Esquire and not on Life. He confined his testimony to Esquire.

*By Mr. Bromley:*

Q. I show you these seven pictures of Carmen d' Antonio in Exhibit 138. What is your opinion with respect to them?

A. Not seriously indecent—again these border-line things, don't you know.

5246

Q. You would not have any objection to them being in a magazine of general circulation, would you? A. It would depend on what else was in the magazine, what might be said about them, and various other things.

Q. Are you familiar with Life? A. Not very. I very seldom see it except by accident.

Q. What is your opinion of this picture that I show you, from Exhibit 18 of the respondent, at page 63? A. Another one of those border-line affairs.

Q. Nothing very seriously objectionable about it? A. No.

Q. And is that true of the picture on page 64? A. This picture (indicating)?

5247

Q. Yes. A. Yes, I don't see anything very objectionable about that.

Q. You don't see anything objectionable about that at all, do you? A. Not so very.

Q. What about this picture on 66? A. Not so bad.

Q. What is your opinion about this picture on page 19 of Respondent's Exhibit 139? A. That seems to be rather indecent.

*Thomas Verner Moore—for Post Office—Cross.*

5248

Mr. Bromley: That is Gypsy Rose Lee (exhibiting to Board).

*By Mr. Bromley:*

Q. What do you think of this picture, the one on the right-hand of page 11? A. This thing (indicating)?

Q. Yes. A. I don't see anything wrong with that.

Q. You see it is a nude woman, don't you? A. Yes, but there is so much over it that you can't see very much. I don't think a man would be very much stimulated by that. I may be wrong but it is my opinion that so much is hidden.

5249

Q. So much is hidden of the nude figure? A. Yes.

Mr. O'Brien: I object to any further cross examination along this line. Counsel has certainly exhibited to the witness, for whatever his undeclared purpose may be, enough to test his judgment or whatever it is.

Chairman Myers: He has his own way of cross examination. I don't know what it is.

Mr. Bromley: Could you tell me, Mr. O'Brien, what the number of this exhibit is?

5250

Mr. O'Brien: Post Office Department's Exhibit 63 is a picture of Joan Leslie.

Mr. Bromley: The last reference was to Post Office Exhibit 63, page 11.

*By Mr. Bromley:*

Q. What is your opinion as to the decency of this photograph, Respondent's Exhibit 67? A. Rather indecent.



*Thomas Verner Moore—for Post Office—Cross.*

*By Mr. Bromley:*

5251

Q. What is your opinion as to the spread of pin-up girls in Respondent's Exhibit 136, please? Take the one at the top left, please, decent or indecent? A. Border-line.

Q. Take the rest of them on the left-hand page. A. I don't see anything objectionable in those.

Q. In any of the rest? A. No.

Q. Take the ones on the right-hand page. A. Upper right-hand, perhaps border-line.

Q. Are the rest all right? A. Not so bad.

Mr. Bromley: Border-line, he says (exhibiting to Board.)

5252

*By Mr. Bromley:*

Q. What is your opinion as to the decency, under your definition, of this excerpt from an article:

"The little island fortress might fall at any time. This announcement would be greeted with laughter and some private would pipe up: 'Well, I'll be a sad son-of-a-bitch. Don't they know we have got Marines on this island?'"

A. We don't use that word in polite society, but I don't think in general that would be so very reprehensible, but I wouldn't like to see a magazine continue to use such words and so be developed in the minds of adolescents this unrefined manner of speech.

5253

I feel that refined speech is a great acquisition of personality. But when a thing like that appears in a magazine it doesn't do much harm.

Q. Nothing sexually stimulating about that? A. Oh, no. It belongs to the unrefined, indelicate, vulgar element in obscenity.

*Thomas Verner Moore—for Post Office—Cross.*

5254 Q. You don't find anything about the use of the word "son-of-a-bitch" in *Esquire* as indecent, do you? A. Not exactly indecent, but there is a good deal of vulgar language in *Esquire* that I think makes it a bit of a nuisance.

Q. How many sons-of-bitches did you find in *Esquire*. Father—I mean words. A. Well, I can remember one, but I can remember a number of other vulgarities.

Q. Well, I was just taking a step at a time. As a matter of fact, you only found one? A. Only one that I remember.

Q. So you wouldn't say that the magazine, the eleven issues, were chock-full of profanity, would you? A. No, but indelicate language is very common.

5255 Q. Father, you don't think that any words, words in themselves, are sexually stimulating, do you? A. You mean isolated words?

Q. Yes. A. No, I don't.

Q. Isn't it a fact, then, that the material in *Esquire* to which you object is the picture material? A. Not entirely, no.

Q. Could you be specific as to what it is textually that you object to? A. The first and last verses of the poem "Benedicts, Awake!", January, 1943 issue; the article "Those Star and Garter Blues", page 83 of the same issue, and "The Unsinkable Sailor", February, 1943, page 45.

5256 Q. Let's take the last one. Did you read all of "The Unsinkable Sailor"? A. A good deal of it, yes.

Q. Is your objection to the whole of it or just to parts of it? A. Naturally to parts of it.

Q. Do you know what parts? A. The scene where he approaches the girl and the girl is very much shocked.

Q. The lowering of the boom paragraph? A. That was a very objectionable phrase.

*Thomas Verner Moore—for Post Office—Cross.*

Q. Was there anything else in "The Unsinkable Sailor" to which you take exception? A. I would have to read it over again.

5257.

Q. Didn't you make notes about it? A. Not very much.

Q. Could you tell me from your notes where it is to be found? A. Page 95.

Q. Can you indicate from your notes what you object to? A. Well, I think the approach to the girl is quite objectionable.

Q. That is again the lowering of the boom reference? A. Yes, the whole attitude of approaching her and one thing and another. It is objectionable.

5258

Q. Did you read that through the paragraph to see what that phrase "How's chances to lower the boom on you, sister?" meant? A. Yes.

Q. What did it mean? A. It is evidently intended to bring out sexual desire by the excitement of the girl.

Q. Did you read far enough to see what the phrase meant? A. Yes.

Q. What does it mean? A. I think he is asking for sex intercourse with the girl.

Q. Then you didn't read the whole paragraph, did you? A. I think so.

Q. Don't you see that right in the paragraph the phrase is explained? A. Well, that is one of those things which suggests but it doesn't say.

5259

Q. You hadn't read that before; had you? A. Yes.

Q. You had read this reference to the meaning of the phrase? A. Yes, but that was not intended.

Q. How do you know what was intended? A. Why, it was intended to express the idea of asking a girl for sexual intercourse, and the idea there was to put in something to cloud the issue.

*Thomas Verner Moore—for Post Office—Cross.*

5260

Q. Do you know the author of this story? A. No.

Q. You don't know him personally? A. No.

Q. Did you know it was a woman? A. No.

Q. You are not interested in that? A. Women can be obscene as well as men.

Q. Did you know the writer of the story was the wife of the president of the National Maritime Union?

Mr. O'Brien: I object to that. There is no evidence to that effect and I move to strike the question.

Chairman Myers: Oh, yes, there was.

The Witness: I didn't know anything about it.

5261

*By Mr. Bromley:*

Q. It wouldn't change your opinion? A. No.

Q. Do you know the phrase "Lowering the boom" is a very well understood phrase by sailors?

Mr. O'Brien: Ask what the readers of Esquire understand by it.

The Witness: No, I didn't, but it evidently suggests that meaning and the adolescent will get that meaning from it, just as I did.

5262

*By Mr. Bromley:*

Q. You deal primarily with delinquent children, don't you? A. Not primarily, no.

Q. Well, largely? A. Well, I deal with children who are retarded in school, for instance, and I have a good many normal children with minor problems of behavior. Why?

Q. Is that the only reference in "The Unsinkable Sailor" to which you took exception? A. That was the chief objection.

*Thomas Verner Moore—for Post Office—Cross.*

Q. You said the other one was the "Star and Garter Blues." A. There was a phrase in that which I pointed out, which suggested the general obscenity of Esquire. One phrase in this article I said expresses the general trend of the obscenity in Esquire. It suggests what it doesn't say.

5263

Q. You have not read all of any issue of Esquire, have you? A. No.

Q. Oh, no. A. No.

Q. And yet you feel perfectly competent to say that that phrase "Esquire suggests what it doesn't say" is a proper characterization of the magazine? A. A proper characterization of the pictures and various things which I did read.

5264

Q. But you don't know if it is a proper characterization of the magazine? A. Not of everything in the magazine, certainly not.

Q. Certainly not. Is there anything in that review to which you take exception? A. I picked out that phrase as evidence of the character of the magazine.

Q. Now, people have ~~done~~ that sort of thing to the Bible, haven't they, Father? A. Well, what about that?

Q. Well, it has been very unjust, hasn't it? A. I don't think what I have done to Esquire has been unjust.

Q. Won't you think about the Bible a moment? A. I will be glad to.

Q. The people who did that to the Bible have been unjust to the Bible, haven't they? A. Not what I have done to Esquire.

5265

Q. Won't you answer my question? A. I did.

Q. The people who have done that to the Bible have been very unjust? A. Done what?

Q. Made fun of it and tried to twist it. A. I have not made fun of Esquire and I have not tried to twist Esquire.

Q. People have tried to criticize the Bible by extracting

*Thomas Verner Moore—for Post Office—Cross.*

5266

isolated passages from it, haven't they? A. I have not tried to criticize Esquire unjustly except by extracting anything that was obscene.

Q. People have tried to extract things from the Bible, haven't they? A. Yes.

Q. And have tried to attack the Bible and they have published books and tried to attack the Bible on the basis of those extracts? A. That is right.

Q. And that is unfair? A. That is unfair.

Q. And what else is objectionable in the "Star and Garter" review? A. I would have to read it over again.

5267

Q. Is there anything else in any article or story in any of these eleven issues to which you object? A. Except the things I have presented as evidence, I would have to make another study.

Q. There is nothing either in your mind or your notes now to which you take exception? A. I have given you all that is in the notes, all that is here.

Q. And that is the only material upon which you are willing to present an opinion, isn't it? A. These things are merely upon the question of vulgarity, which I look upon as a minor issue. "The Unsinkable Sailor" and the "Star and Garter." The major thing is other things that tend to produce sexual excitement in the minds of adolescents.

5268

Q. Have you named all of those things? A. Not all of them, but I think enough to show.

Q. And you are willing that your opinion should stand on the basis of the material to which you have called attention? A. Certainly.

Q. And your test which you have used in reaching this conclusion, Father, is stated in your long prepared statement which you read into the record? A. Certainly.

Mr. Bromley: That is all. Wait a minute—



*Thomas Verner Moore—for Post Office—Redirect.*

*Redirect Examination by Mr. O'Brien:*

5269

Q. Doctor Moore, Mr. Bromley, in cross examination has showed you quite a number of pictures and asked you to state whether or not you consider them decent or indecent.

Concerning a considerable number of those pictures you have stated that you consider them border line, on the border line of indecency or otherwise.

What would you say as to the same pictures if they were presented in connection with the text and the make-up of Esquire? A. They might be indecent and give rise to sexual feelings if the text and the context were sufficient.

5270

Q. When you made your examination of Esquire was that an entirely independent examination, independent of any ideas that might be expressed to you by any representative of the Post Office Department? A. Oh, certainly.

Q. And did you spend a sufficient length of time, in your judgment, to acquaint yourself with the matter concerning which you intended to testify? A. Certainly. I didn't attempt to make an exhaustive examination of all the obscenity because I thought that would take too long, but I did try to bring out things that were obscene.

Q. And you didn't attempt to list in the notes which you have read here and referred to, all of the indecent matter which you found in Esquire? A. No.

5271

Q. You didn't list all of the various Varga girls or all the cartoons which you found noted on the copies which were left, with you? A. Yes. And failure to do so does not always mean that I don't regard those things as obscene.

Q. For instance, in the June issue, 1943, of Esquire, did you read this paragraph:

*Thomas Verner Moore—for Post Office—Redirect.*

5272

**"An epitaph.**

"Here lies the body of poor old Charlotte  
Born a virgin, died a harlot.  
For eighteen years she kept her virginity  
An all-time record for this vicinity."

Did you note that in your examination?

Mr. Bromley: I object to that as repetition. He referred to it in his direct examination.

Chairman Myers: Well, let him answer it.

5273

The Witness: What is that?

Mr. O'Brien: The bottom of the page and continuing in the next column (indicating).

The Witness: Well, that is rather vulgar.

*By Mr. O'Brien:*

Q. Do you consider that a belittling of the state of virginity and a cheapening of it? A. It looks that way. In fact, the general trend, I felt, of *Esquire*, was to depict women as a kind of object for male satisfaction, and I think one might get that idea of women from looking through *Esquire*.

5274

Q. In this issue of *Esquire* for February, 1943, at page 65, is the cartoon captioned: "What am I bid for this 100 pounds of sugar?" included in your survey? A. Yes. It is a bit vulgar.

Q. Would you say this is a cheapening of womanhood and decency? A. Yes.

Q. When you referred in cross examination to women lying on couches did you have in mind perhaps some of these Varga girls who are in reclining positions in these various costumes? A. That would have something of a similar effect.

*Thomas Verner Moore—for Post Office—Redirect.*

Q. And what do you think the effect would be upon the minds of persons contemplating such pictures? A. On the adolescent those would cause a great deal of sexual excitement without question. I think anybody who would look at the matter honestly would say that the pictures in Esquire would cause sexual excitement in adolescents.

5275

Q. What do you think would be the effect upon an adult who constantly read these issues as a matter of habit? A. As I pointed out, adults are not free at all from sexual excitement. They are only on the average less so than adolescents.

Q. When you used the words "bad taste" in response to some of the questions Mr. Bromley asked you, would you say that expressed— A. I certainly would not. You mean the expression referred to as bad taste?

5276

Q. Does that mean bad taste in morals or decency? A. It depends upon the situation. Sometimes the phrase would simply mean lack of refinement in speech which would be an unfortunate thing in any individual who made habitual use of such language.

Q. As you have examined it and determined for yourself what it is, in the article "The Unsinkable Sailor," do you think the use of the word "sonovabitch" there was conducive to public morals and good behavior? A. No. I deprecate the use of that and various words.

5277

Q. The article which referred to the lowering of the boom and that later added statement that that was supposed to mean, although the girl didn't know it, it was supposed to be an attempt to borrow money, did you think that explanation was honest or just a subterfuge? A. It seemed to me that was a subterfuge.

Q. And up to the point where that was explained or stated, the connotation of the item was definitely indecent. Isn't that so? A. Yes.

*Thomas Verner Moore—for Post Office—Recross.*

5278

Q. Mr. Bromley asked you about whether you knew this was a common expression, well known to sailors. Is it your understanding that the reading of Esquire is confined to sailors? A. Most certainly not.

Q. Is it your impression that the sailors, two million men now in the United States Navy from 18 years of age up, are addicted to the use of that type of language? A. They might very well be, I don't know. Sailors are said to be addicted to the use of undesirable language generally.

5279

Q. Assuming that men do pin up these girls in their quarters or otherwise, would you think that that might improve their morals? A. No, I don't. I think it is one of the factors in arousing sexual excitement and tending to seek it in unlawful manners, and in that way might contribute to the venereal diseases.

Mr. O'Brien: I have no further questions.

*Recross Examination by Mr. Bromley:*

Q. Father, as a psychiatrist, you do not believe in verbal imagery, do you? A. What do you mean by that?

5280

Q. Isn't that a term well known to psychiatrists? A. To psychologists. Verbal images certainly take place in the human mind. Such a thing as sensory, visual, verbal imagery.

Q. Didn't you say that verbal imagery is the refuse of sensationalists who attempt to explain all our mental life in sensory terms? A. Well, though I might have said something of that kind very well, that doesn't mean that I deny the existence of verbal imagery, but only that verbal imagery does not constitute our thought processes. Has that something to do with the problem?

*Thomas Verner Moore—for Post Office—Recross.*

Q. You recognize the quotation from one of your books?

A. Probably. It seems a bit familiar.

5281

Q. And the specific book is "Dynamic Psychology," which you wrote in 1924? A. Yes; a long time ago.

Q. Would it make any difference at all to you, or the opinions which you have expressed, to know that a survey by the Crossley Service has indicated that four out of five people of this nation think the Varga girl drawings are decent and not indecent? A. It wouldn't make any difference to me, because my opinion is not based upon the general opinion of adolescents, nor what I know of the general opinion of the public about adolescents, but on what I know of adolescents from my own experience and from experimental work.

5282

Q. Do you know William Allen Neilson of Smith College?

A. No.

Q. You never heard of him? A. No.

Q. Was your purpose in the redirect examination to condemn as obscene every Varga girl drawing in every one of the eleven issues? A. Some were more objectionable than others is about all I would say. I would not be able now to say whether I would say of some of them that they were border line, as I have said about others, but some are definitely not.

5283

Q. Then you did not mean to condemn every Varga girl, did you, in the eleven issues, as obscene? A. No, I didn't cite those in my notes.

Q. Then there may be some that you would not characterize as obscene? A. There may be some that are border line. I would have to examine them over again.

Q. Did anyone ever call your attention to the fact that Father Flanagan was an Esquire contributor? A. Well, I have contributed to magazines myself, and I certainly

*Thomas Verner Moore—for Post Office—Recross.*

5284

wouldn't like to be held responsible for everything in the magazine.

I have contributed to psycho-analytical reviews, and if in some way Father Flanagan contributed to this magazine it would not follow that he approved what was in the magazine. Perhaps he was trying to elevate its tenor.

Q. You don't mean to seriously suggest that either you or Father Flanagan would contribute to an indecent magazine just to get money? A. If what one contributed was decent it might help the magazine a little.

5285

And it might have been in this way. Sometimes a person sends out an article to somebody who is going to get it published, and that person picks the magazine. Of course, that is sometimes unfortunate.

Q. But, generally speaking, don't you consider the character of the magazine to which you contribute? A. I certainly do.

Q. Isn't that true of most honest, decent men? A. I remember one scientific magazine I refused to contribute to because it introduced politics.

Mr. Bromley: That is all.

*By Mr. O'Brien:*

5286

Q. Did you know, since counsel brought that up, that Father Flanagan didn't originally write that article or cause it to be written or permit it to be written for Esquire magazine at all? A. I didn't know anything about the article.

Mr. O'Brien: That is all.

Mr. Bromley: That is all.

(Witness excused.)



*Recess.*

Chairman Myers: Have you any other witnesses?

5287

Mr. O'Brien: I have no other witnesses.

May we have a short recess?

Chairman Myers: We will have a short recess.

(Whereupon, a brief recess was taken.)

Chairman Myers: Come to order, gentlemen.

At this time we will recess until 9:30 tomorrow morning.

(Whereupon, at 4:00 o'clock p. m., the hearing was adjourned until Saturday, November 6, 1943, at 9:30 o'clock a. m.)

5289

## HEARING OF NOVEMBER 6, 1943.

## PROCEEDINGS RESUMED.

5290

Chairman Myers: Are you ready to proceed?

Mr. Hassell: I am ready, Mr. Chairman.

## ARGUMENT BY MR. CALVIN W. HASSELL.

5291

I might say at the outset here that you won't have to hear any long tiresome address by me. I do not intend to go through all the testimony of these witnesses, balance one against the other, or anything of that sort.

I have just a few ideas here that I want to put forward to the Board as to my views respecting this matter and the things that enter into a decision that you are required to reach.

The first thing to be borne in mind is that this case arises under 39 U. S. Code, 232, which requires that a hearing be held in order to determine whether the second-class privilege be revoked.

The decision in this case does not require any determination as to the criminal liability of the editors and publishers of this publication, nor as to its mailability.

5292

We go from the statute requiring this hearing to the so-called second-class Act, 39 U. S. Code, 226.

That Act starts out: "Except as otherwise provided by law the conditions upon which a publication shall be admitted to second-class are as follows", and then proceeds to recite the conditions, and then we come down to the fourth condition, and that part of the fourth condition which is in issue in this case.

Now, it is otherwise provided by law, namely, by 39 U. S. Code, 224, that "mailable matter of the second-class shall embrace" and so forth.

*Argument by Mr. Hassell.*

The Supreme Court, in the Milwaukee Social Democrat versus Burleson case, 255 U. S. 407, decided in 1921, that in order to continue to enjoy the second-class privilege the publication must be devoted to the dissemination of "mailable matter". "Mailable matter" in that case was matter under the Espionage Act, subversive matter.

5293

Now, the query arises why did not Congress write the words of 39 U. S. Code 224 into the fourth condition of the second-class Act, namely, 39 U. S. Code 226?

If this had been done the fourth condition might have read as follows: "It must be originated and published for the dissemination of mailable information of a public character or devoted to mailable literature, the sciences, the arts", and so forth.

5294

But the inclusion of such language in this statute would have been ridiculous. The words "mailable information of a public character" and "mailable literature" do not fit well together.

It follows, I think the conclusion is inevitable—that while the words "information of a public character" necessarily include "mailable matter", regardless of the wording of 39 U. S. Code 224, they also have a broader significance.

5295

These words in the fourth condition relate back to the reason why Congress established the second-class privilege, and why it maintains it.

Congress was actuated in establishing this privilege, the Supreme Court said in *Lewis Publishing Company versus Morgan*, 229 U. S. 288, 301, by "conceptions of public good to be accomplished."

In the Congressional debate which led to the enactment of the Second Class Act, Mr. Money, of the

*Argument by Mr. Hassell.*

5296

House Post Office and Post Roads Committee, said on February 20, 1879, at page 2135 of the Congressional Record, that the publications to be granted the privilege "are the most efficient educators of our people" and "are intended for the dissemination of useful knowledge such as will promote the prosperity and the best interests of the people all over the country."

Chairman Myers: Will you give me the reference again?

5297

Mr. Hassell: February 20, 1879, Congressional Record, page 2135.

If we apply the words "public good", "efficient educators", and "useful knowledge", to the fourth condition of the second-class Act, we get some light on the phrases "information of a public character or devoted to literature, the sciences, arts, etc."

I submit that there cannot possibly be embraced in these phrases and these words, any intention of Congress to subsidize or to give a special privilege status to coarse, indelicate, bad taste, salacious, indecent, lascivious, prurient, obscene matter.

5298

The second-class privilege for these high purposes and high objects was and is and has been a settled policy of Congress for three-quarters of a century. During all this time there has been another consistent and settled policy of Congress. That has to do with its settled and well-established policy against the transmission and dissemination of indecency, lasciviousness, obscenity, and filth.

The original anti-obscenity statute was enacted in the great postal reorganization act of June 8, 1872. Since that time it has been repeatedly amended and broadened and Congress has enacted similar laws

*Argument by Mr. Hassell.*

with respect to the interstate transmission of obscene matter, the transmission of obscene matter in foreign commerce, and embraced anti-obscenity provisions in the Tariff Acts.

5299

Now, here we have two clearly defined policies of Congress. On the one hand a beneficent policy with respect to the dissemination of "information of a public character" for the "public good". That is at the top of the scale.

At the bottom of the scale you have the clear and settled policy of Congress to keep away from, as far as it was able to accomplish it, the dissemination of lascivious, prurient matter, and matter appealing to the baser motives of man.

5300

Having in mind these two policies, both designed for the same purpose, the public good, let's take a look at the postal obscenity statute.

Counsel for the publisher here would have you regard this statute as only a criminal law. Why would he have you do that? Because he would apply all of the protective strict construction applicable to a criminal statute to the decision to be arrived at in this proceeding. He would require you to unanimously agree that all of the issues involved here and every single piece or item of matter that I called attention to were within the terms of the postal obscenity statute beyond a reasonable doubt, to such an extent that the publishers of this publication could be indicted and convicted in a criminal case.

5301

It is my position that you most certainly do not have to do this. Of course, I don't have to tell you that this is not a criminal case.

This statute, 18 U. S. Code 334, has another very important feature. It is just as plainly a non-mailability statute as it is a criminal statute. As a

*Argument by Mr. Hassell.*

5302

matter of fact, as an instrumentality for the protection of the public against salacious matter, the record shows its non-mailability feature has been far more effective than its criminal feature.

This non-mailability provision provides that matter described in the statute "is hereby declared to be non-mailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier".

5303

Even if you were required to determine whether this matter is non-mailable, you would not have to reach a unanimous verdict or be convinced beyond a reasonable doubt.

In considering the matter involved, you must keep in mind the only purpose of this proceeding and that is whether this publication shall continue to enjoy the badge of merit of the Post Office Department, and whether it is designed "for the public good" as an "efficient educator" and as a disseminator of "useful knowledge".

In other words, whether it is "designed for the dissemination of information of a public character or devoted to literature, the sciences, or arts".

5304

You should not overlook the fact that in addition to bearing the stamp of approval of the Post Office Department, as coming within this part of the fourth condition of the second-class Act, that the publication is in fact, subsidized in a sum in excess of \$500,000 a year. In reference to the polls referred to by counsel for the publisher and in the testimony on behalf of the publisher, I might suggest that a Gallup poll might be in order, of the tax-payers of the United States, as to whether they would think it proper that they should be taxed, no matter how small the amount, for the dissemination of this type of matter.



*Argument by Mr. Hassell.*

I think this question is an eminently fair one and I believe the answer of the public would be: "Well, if we have got to pay for the carrying of this stuff, just let it stay out."

5305

I have indicated before that you do not have to pass on the mailability of these issues. We all know they passed through the mails.

At this point you may say: "Well, why were they permitted to pass through the mails?" That same question was asked in the Milwaukee Social Democrat case and was undoubtedly considered by the Supreme Court.

5306

There you had, I believe, thirteen issues of the publication that had gone through the mails, but the Supreme Court held that the action of the Postmaster General in revoking the second-class privilege was a proper one by reason of the fact that it was shown that it was the consistent policy of the publication to carry non-mailable matter.

Now, let us take up and look at the history of this publication as disclosed by this record.

You will recall there were three distinct methods shown by the evidence for handling this most troublesome publication.

I use the word "troublesome" advisedly, because this record justifies that and that is the fact.

5307

This record shows that the Department has had trouble with this publication as far back as 1936 or 1937.

First, it was attempted to handle the matter by ruling on the mailability of the individual issues. Several such issues were ruled out and we come to the Fall of 1940 when the November and December issues were held to be non-mailable.

*Argument by Mr. Hassell.*

5308

In the December issue there was included a two-page spread of cartoons. You gentlemen will probably remember it. Under each one of the cartoons in this two-page spread there were two lines of dirty, filthy parody on the innocent childhood Christmas jingle, "The Night Before Christmas". I think this is a pretty fair index of the character of this publication.

Since that jingle as it was originally included has not been read I would like to take the time to read it to the Board.

5309

This is what the publisher wanted to get through, illustrated by these cartoons in this two-page spread.

" 'Twas the month before Christmas  
And all through the flat  
There wasn't a sign  
Of a cane or a silk hat.  
Poor Doris was lounging  
In her silken bed  
With visions of mayhem  
In her pretty head.  
When on her pent-house roof  
There rose such a clatter  
She sprang to her feet  
To find what was the matter.  
When in stepped a gent  
Who was dressed all in fur  
And he started at once  
Making passes at her.  
He drank of her Scotch  
And he drank of her charms  
And he held her enslaved  
In his two manly arms.

5310

*Argument by Mr. Hassell.*

Resistance from Doris

Was not very strong

5311

And somehow the moments just drifted along.

Then just as the dawn

Started lighting the sky

He sprang to his feet

And he kissed her good-by

And she heard him exclaim

As he started to leave

Just rehearsing, my dear,

I'll be back Christmas Eve."

I don't have to tell you gentlemen that this little jingle, "The Night Before Christmas", has been recited to millions of children in this country at their father's and mother's knees on Christmas Eve. And I say that this is a fair index, to my mind, of the character of the matter that this publication has consistently and persistently as an editorial policy, attempted to put over,—attempted to put over, as counsel would state it possibly, with "more frank expression."

5312

You recall the testimony shows that Mr. Gingrich, of the publication, when he heard of the ruling of the Solicitor, made a hurried telephone call and importuned the Solicitor under stress of great financial loss to the publication, that he be permitted to change the words of the verse in order to take out its filthy and indecent connotations.

5313

That was done and that led to the second method of handling Esquire following that incident.

The publisher said, "You have done it in this case—you revised one of the articles for us, why can't you do it hereafter? Why isn't it reasonable that you hereafter advise us before publication?"

*Argument by Mr. Hassell.*

5314

Then they came along with other matters, and finally we got in to revising the dummy. Of course, as the matter developed, it was not at all satisfactory. The publisher has shown by this record that he was repeatedly endeavoring to get salacious matter passed. The publisher was not entirely frank with the Department in the handling of the matter.

The dummy was in such shape, very unattractive, largely in black and white, in such great bulk that the physical task of examining it in detail made the possibility of overlooking matters, that should have been objected to, more certain.

5315

I am pretty well satisfied that the publisher had that in mind when it induced the Department to go into that.

Of course, it naturally followed that word got out that this dummy was being examined. Other publishers that wanted to get things by came in and said, "You are doing it for Esquire. Can't it be done for us?" And pretty soon we had over sixty questionable publications that we were supposed to examine and give a sort of pre-edit on.

5316

We didn't have the force to do it and it is not surprising that questionable matter got by under that plan.

That led to the third and final method of handling Esquire, and that is the proceeding we are in now.

On May 21, 1942, a letter was sent by the Solicitor to the publisher of Esquire telling him that the law did not require us to examine matter in advance of its being deposited in the mails, and, in fact, that if he had any doubt as to the character of matter under the postal obscenity statute, in good conscience he should not mail it.

*Argument by Mr. Hassell.*

Inherent in the third method of handling Esquire was this thought, intent and purpose: that the Postmaster General should appoint a Board that should have the benefit of a broad view of this publication.

5317

In these other methods of handling Esquire you were more or less required to concentrate on one picture, one article, or one issue of the publication. And under this plan it was felt that the Board to be appointed by the Postmaster General would have the benefit of the broad view, to determine as a matter of broad policy, whether the publication was intended, was designed, for the "dissemination of information of a public character", having in mind the provision of the postal obscenity statute.

5318

On the basis of such a survey, the Board could determine whether the magazine is designed for the "public good" as an "efficient educator", as "a disseminator of useful knowledge." In other words, whether it is "originated and published for the dissemination of information of a public character, or devoted to literature, the sciences or the arts."

In this connection I want to call to your attention this fact. Please note this provision of the second-class Act does not say it should be "originated and published (in part) for the dissemination of information of a public character or (in part) devoted to literature, the sciences or the arts."

5319

If salacious and prurient matter is "disseminated" by the publication in part, and if it is in part "devoted to the dissemination" of such matter as a regular editorial policy, as the testimony of Mr. Gingrich indicates here, if the Varga girls and these other features are part of the editorial policy of this publication, then I submit it comes within this provision of the statute.

*Argument by Mr. Hassell.*

5320

It is my position that the other matter in this publication is a vehicle for transmission of this prurient matter, and in this connection please do not overlook the high class advertising. I ask you gentlemen to ask yourselves this question: How many of these advertisers would permit their names to appear in this publication if this vehicular part of the publication were eliminated? If we had Vargas and all this questionable matter, if the whole magazine were devoted to that?

5321

Of course the public would not take it either. That is the psychology of the situation. The public only wants so much of that matter. It can only stand so much of it.

Now, I have indicated before that you are not required to determine the mailability of these issues, any one of them, any part of any one of them or all of them. They have already passed through the mails and they have acquired no respectability by having passed through the mails.

The only legally constituted officer of the United States Government to pass on this matter has already passed on that question. He says that these issues are non-mailable and he had a broad view of the eleven issues.

5322

Now going back for a minute to the non-mailable provision of the obscenity statute. Solicitors of the Post Office Department, and their predecessors, formerly known as the Assistant Attorneys General of the Post Office Department, have been standing between your homes and my home and the homes of every person in this land and a flood of obscenity for 75 years. I say a flood of obscenity in the mails. That flood is always at the gate trying to push through.

The courts have held that 18 U. S. Code 331 empowers the Postmaster General to exclude matter from the mails. The Postmaster General pursuant to the authority contained in 5 U. S. Code 369, has, by Section 7 of the



*Argument by Mr. Hassell.*

Postal Laws and Regulations, delegated to the Solicitor of the Post Office Department the duty of passing upon the mailability of such matter in the mails.

5323

The courts have further, in every single case involving non-mailability rulings by this Department, except in one, approved the action of the Post Office Department. That case was that of *Mr. Henry Mencken, who testified here, and his American Mercury, Inc. vs. Kiely*, 19 Fed. (2d) 295, in which the Circuit Court of Appeals for the Second Circuit said that the question was moot.

The Court passed on this question in the case of *In re Coleman*, 131 Federal 151; *Anderson vs. Patten*, 247 Federal 382 (the District Court for the Southern District of New York).

5324

As to obscenity and as to subversive matter, the case of *Gitlow vs. Kiely*, 44 Fed. (2d) 227, which was affirmed by the Circuit Court of Appeals for the Second Circuit in 49 Federal (2d) 1077.

Also in *Burleson vs. U. S. Ex. Rel. Workingmen's Cooperative Publishing Association* case, 274 Federal 749, decided by the Court of Appeals for the District of Columbia, 1921.

The records of this Department show, during 1942 and 1943, that there were a total of 282 convictions under the criminal provisions of the postal obscenity statute and there were 4,457 rulings by the Solicitor of the Post Office Department to postmasters and postal officials as to the mailability of matter under the statute.

5325

A great deal of this matter ruled on by the Solicitor was stopped before it got started to circulate. It was stopped at the post offices when mailed.

Of course the Solicitor does not claim infallibility. The task is an arduous one, a never-ending one in peace or in war. The flow of salacious and prurient matter is a never-ending one, but I want to call the Board's at-

*Argument by Mr. Hassell.*

5326

tention to the fact that the courts have always been open to every single individual who may think he has been aggrieved by a ruling of the Solicitor. As a matter of fact, now the Postal Regulations have been amended so as to require the postmaster to hold matter for a long enough time to enable the mailer to go into court and apply for relief.

5327

As I stated at the outset, I do not intend to discuss the various and sundry views of the witnesses who appeared here to advise this Board on the question of obscenity. We have a pretty wide range of views; possibly, we might say, ranging all the way from Mrs. Wiley down, shall I say, to the lady who appeared for the publisher from Great Neck, Long Island, who testified from this witness stand that she considered any factual reproduction by pictures or words as not obscene, as proper for transmission.

She went so far as to say, as I recall, that the French filthy postcards were non-objectionable to her.

When we sift all this matter down, you come right back to where you started. I doubt very much that the opinion of any one of you gentlemen has been changed by this testimony. Each one of you is entitled to hold your own views and maintain your own views as to the salacious character of this matter, as every person who is allowed at large is too.

5328

The Board will recall that counsel has assiduously and diligently sought through various and sundry publications to find matter to match matter in this publication. We have had truckloads exhibited here from various and sundry publications in a frantic effort to show such matter as are contained in Esquire.

Another thing struck me about that; regardless of all the effort put out in that endeavor, these most able counsel and their assistants have been unable to find anything to

*Argument by Mr. Hassell.*

match this publication. Where have they shown you here anything to match any such salacious sex appeal as the Varga girl? I haven't seen it.

5329

They showed some little black and white so-called pin-ups, about 2½ or 3 inches square, in some magazine. It would almost require a large-sized magnifying glass to find out what they were all about.

Here we have in this publication these gate-folds, as they are called, two-page size, color pictures of what has been referred to here as the "glorification of American womanhood." I do not accept that description of it. It does not describe these pictures at all.

5330

The fact that young soldiers do pin them up in their barracks means, and it is a very clear indication to me, that they get some sexual enjoyment from viewing them.

I submit to this Board that the publication *Esquire* has been a trail-blazer in pandering to the prurient ever since it was established, and thus far it is not equaled by any other publication enjoying this high privilege, this subsidy from the American people.

In all this testimony we have heard here and all these extraneous publications we have had shown to us; I feel that counsel has sought to accustom all of us to these Varga wenches and the other objectionable material in this publication. You can get accustomed to anything if you go over it enough. It makes no impression on you at all. I think that was one of the ideas, but I want this Board to please bear in mind to not lose sight of the fact that the Board is here in this tiresome hearing, to determine one question and one question only: that is, whether this publication is entitled to continue to enjoy the prestige and stamp of approval of the Post Office Department; whether it is entitled to a subsidy from the hard-pressed

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*Argument by Mr. Bromley.*

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taxpayer of over half a million dollars a year; whether it is designed for the "public good" as an "efficient educator" and as a "disseminator of useful knowledge."

In other words, whether by reason of its playing persistently and consistently as an editorial policy, with Vargawenches and the other matter pointed out here, it is originated and published for the dissemination of information of a public character or devoted to literature, the sciences or the arts."

I thank you.

Chairman Myers: Mr. Bromley.

5333

**ARGUMENT BY MR. BRUCE BROMLEY.**

Mr. Bromley: May it please the Board, at the risk of being charged with unseemly flattery, I desire to say at the outset that the respondent is appreciative and grateful for the unfailing courtesy and untiring patience and the complete fairness which the Board has manifested in the conduct of these hearings.

Mr. Hassell has posed the question at the outset, "Just what is it that we are here for?"

5334

I mean no disrespect when I say I find the statement of his position to be extremely confusing.

I agree with him in his last statement that we are here to determine whether or not we should lose our second-class privileges.

I find myself in some doubt, however, as to his position as to what the ground of the charge is that we are no longer entitled to them.

*Argument by Mr. Bromley.*

Let me, therefore, call attention to the citation which is the only pleading that we have in this case and which presumably states accurately and deliberately the ground of the complaint against us. I refer to it because I think the Chairman, if the Board pleases, had an idea that the citation contained two charges, while I had an idea that it contained but one charge.

5335

It seems to me that it contains but one charge because while it is divided into three paragraphs, those paragraphs are introduced with the phrase that we should show cause why our second-class privileges should not be suspended or annulled upon the grounds (a) that the magazine is non-mailable in that the issues—eleven of them—have contained obscene, lewd, and so forth matter, and on the ground further that because of the inclusion of such matter in the publication it has not fulfilled the qualifications of second-class mailing, and upon the further ground that it is not a mailable publication as it in a generally systematic manner publishes non-mailable matter in that in the eleven issues it has included matters such as is cited in paragraph (a).

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I should think, fairly construed, that meant only that the charge is limited to obscene matter, and that because the matter was obscene the publication was not originated and published for the dissemination of public information.

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However, it makes little difference to me whether my interpretation of that citation be correct or incorrect. It makes little difference to me whether the Post Office Department has enlarged its charge or whether it has not.

I am going to assume now that there are two charges against us; (1) that our magazine has contained obscene matter and, therefore, we should lose our second-class privileges, and (2) that with or without regard to that, it doesn't fulfill the fourth condition because it is not devoted to the



*Argument by Mr. Bromley.*

5338 dissemination of information of a public character or devoted to literature, the sciences, or the arts, because I think the evidence in this case establishes first that the matter is not obscene, and secondly, that the magazine is devoted to the dissemination of information of a public character or to literature, the sciences, and the arts.

I will take the second one first. What is the evidence as to the general character of the magazine? What is the proof here as to whether it regularly publishes information of a public character?

5339 I think I should say first that while Mr. Hassell pointed out to you that the statute does not say that it should be entirely composed of information of a public character, it does not say "solely", or it does not say "partially". It doesn't say anything. It just says "shall be devoted to".

What does that mean? Does it mean entirely, does it mean partially, does it mean most of it or some of it?

Well, as reasonable men, wouldn't we all agree that the reasonable interpretation is that the publication must be substantially devoted? There is no magazine today which is entirely devoted to information of a public character. If cartoons be said to be not of that nature, every magazine from the Saturday Evening Post up and down is partially composed of items of entertainment, like the funny joke, like the funny cartoon.

5340 The statute not having used the words "entirely devoted to public information" cannot be construed to mean entirely, it seems to me.

That is an unreasonable interpretation.

It must be construed to mean substantially devoted.

If that is sound as a basis for the interpretation of the fourth condition, what is the evidence here? The best evidence is the magazine itself, and two or three times,



*Argument by Mr. Bromley.*

notably with the editor, I tried to demonstrate to you, at too much length probably, just what the magazine is composed of.

5341

The best way for the Board to do is to do as I did, starting with the Table of Contents and looking at the articles. It takes very little demonstration and it makes no difference which one of the eleven issues you pick out. You will find that the majority of the articles are devoted to the dissemination of public information and of current information of an exceedingly useful and helpful character, that a considerable part of each issue is devoted to fiction.

Surely fiction is literature, no matter whether one believes it to be of the highest type or not.

5342

And the rest of the magazine is devoted to departments, to personalities, to art, to sports.

So the best evidence, and indeed it seems to me, the most conclusive evidence, is an examination of each issue itself. The result of that examination is to lead irresistibly to complete persuasion that this magazine, like any other comparable magazine, is substantially devoted to the dissemination of information of a public character and to literature or the arts.

Now, we put in evidence, just to add conviction to this easily made demonstration, the Lloyd K. Hall survey. You remember Mr. Hall testified he had been in the business of making this type of editorial content survey since 1936 and he did it not only for Esquire, but for every magazine of any importance in the field, and that he used the same basis in making the survey for Esquire as he did for other magazines, and that it was sold to advertisers and agents at \$800 a year, was sold to them and relied on by them.

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That survey on pages 1 and 2 groups magazines as weeklies, women's, home, general fashion, farm, and then shows

*Argument by Mr. Bromley.*

5344

their contents divided into national affairs, foreign affairs, beauty, amusement, business, children, farming, food and health.

You can look at that table and find out, for instance, how a magazine like *Life* compares with *Esquire*, how the *Saturday Evening Post* compares with *Esquire*, how each one of these magazines compares in advertising content and, I think it is interesting to note that *Life* is half advertising while only 35 per cent of our magazine is advertising.

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On page 27 you have a break-down as to the complete editorial content of *Esquire*, starting with national affairs and going through all the classifications such as fiction, cultural interests, wearing apparel, travel, sports, industry, foreign affairs, and you can find there tabulated carefully and statistically facts like this: that over these eleven issues here analyzed, ten per cent of each issue—ten per cent of each issue—has been devoted to sports, and by looking at the index you will see that the magazine always carries from four to six informative, interesting, and instructive articles about sports by authorities.

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And you can go to any field analyzed in the whole survey and find what proportion of the editorial content, percentage-wise, is devoted to that subject, and how that compares with any magazine you can think of, of general circulation in the field.

And not content with the conclusions to be reached by looking at the magazine and this survey, we brought in affirmative testimony.

Fred S. Siebert, Director of the Illinois School of Journalism, testified it was part of his practice and duty to analyze and have his students analyze the editorial content of all magazines of reputation and standing, that he had done it for years with his classes, as to *Esquire* and other maga-

*Argument by Mr. Bromley.*

zines, and he testified as an expert that all of these issues were composed substantially of information of a public character or devoted to literature and the arts.

5347

Professor Smith, the head of the Chicago private school, gave the same testimony.

Not content with that, we called in an outstanding authority, a leader, Reeves Lewenthal, who is President of the American Associated Artists, a recognized authority in that field, and he pointed out, it seems to me with the greatest possible conviction and persuasion, the precise art content of each of these issues, which was considerable in volume, and of a quality which was extraordinarily high.

5348

And, incidentally, you will remember he put his finger on two items complained of by these gentlemen, to-wit, the two colored photographs, "Golden Mould" in the November issue, and "Mood for Red Hair" in the August issue, and Mr. Lewenthal said they were examples of the highest type of photographic art, so high that "Golden Mould" was used by painters to illustrate the extreme excellence of the art of reproducing that type of art.

Now, it is significant, I think, to reflect that not a single witness produced by these gentlemen, not even the witness Father Moore, had any criticism to make of either one of those photographs, although they were cited in the complaint against us by these gentlemen, as obscene.

5349

Not content with demonstrating the high excellence of the art content of the magazine, we called three witnesses to demonstrate the excellence of the sport content, Major Griffith, the director of the Big Ten, Congressman Weiss, and Clark Shaughnessy, the well-known football coach, and also Doctor Jacobs, the college president.

All of them endorsed the magazine and its value and particularly the sports poll, as the outstanding sports item of any magazine.

*Argument by Mr. Bromley.*

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And then to finish it up we asked Channing Pollock and Henry L. Mencken general questions as to the general literary merit of the magazine and they both said it had a high literary merit as a matter of generality, and taking the eleven issues as a whole.

Against these witnesses are no Government witnesses who have read any issue as a whole, or who are in a position to state any opinion with respect to the content of any one of the eleven issues.

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So I say that, taking Mr. Hassell on any ground that he wants, it is absurd to argue that this magazine is not devoted to the dissemination of information of a public character or to information with respect to the arts or literature. It fulfills, as well as any magazine published today, the reasonable requirements of that statutory provision.

And now, I come to what I have always thought was the real question and that is obscenity. And may I say at the outset that I want to refer just briefly again to the question, what is the test which you as a Board shall apply in trying to determine whether a thing is obscene or not.

And I quote from page 12 of our brief, in the middle of the page, where the Court said:

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"In order to sustain the prosecution, the court must find that the tendency of the book as a whole, and, indeed its main purpose, is to excite lustful desire and what has been rather fancifully called 'impure imaginations'. The statute is aimed at pornography, and a pornographic book must be taken to be one where all other incidents and qualities are mere accessories to the primary purpose of stimulating immoral thoughts."

And again, on page 13 from the Court of Appeals of this District, the top of the page, and the first paragraph and a half:

*Argument by Mr. Bromley.*

"Probably the fundamental reason why the word obscene is not susceptible of exact definition is that such intangible moral concepts as it purports to connote, vary in meaning from one period to another. It is customary to see, now, in the daily newspapers and in the magazines, pictures of modeled male and female underwear which might have been shocking to readers of an earlier era. An age accustomed to the elaborate bathing costumes of forty years ago might have considered obscene the present-day beach costume of halters and trunks. But it is also true that the present age might regard those of 1900 as even more obscene.

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"With such consideration in mind, the perhaps most useful definition of obscene is that suggested in the case of *United States versus Kennerly*, i.e. that it indicates the present critical point in the compromise between candor and shame at which the community may have arrived here and now."

5354

All decisions, all recent decisions, without exception, I believe, have held that the character of a publication is not to be judged by its effect upon any particular class of society, but shall be judged by its effect upon the average human mind.

In other words, as I said in the opening, I believe the law is that the standard as to what the effect is and who is to be affected, is the reasonable man's standard, the average, ordinary human being.

5355

And at the bottom of page 17 there is a quotation from Judge Learned Hand in the *Levine* case in the Circuit Court of Appeals, the one which appears in italics at the bottom of the page:

"This earlier doctrine"—that is the *Regina versus Hicklin*—"necessarily presupposed that the evil against which the statute is directed so much outweighs all interests of art



*Argument by Mr. Bromley.*

5356

letters or science, that they must yield to the mere possibility that some prurient person may get a sexual gratification from reading or seeing what to most people is innocent and may be delightful or enlightening. No civilized community not fanatically puritanical would tolerate such an imposition, and we do not believe that the courts that have declared it, would ever have applied it consistently."

5357

Those citations can be multiplied. There are more to the same effect on page 27 and page 28, and I should like particularly to commend to your consideration the footnote on page 51 which was from a case in New York, and which I think is of great significance here, beginning, "The language of the play"—and that was "Frankie and Johnnie"—you will remember this was a play that was based on that dirty verse, "Frankie and Johnnie", and the play was attacked as obscene. The Court said;

"The language of the play is coarse, vulgar, and profane; the plot cheap and tawdry. As a dramatic composition it serves to degrade the stage where vice is thought by some to lose half its evil by losing all its grossness."

5358

"That it is "indecent" from every consideration of propriety is entirely clear, but the court is not a censor of plays and does not attempt to regulate manners. One may call a spade a spade without offending decency, although modesty may be shocked thereby. The question is not whether the scene is laid in a low dive where refined people are not found or whether the language is that of the bar room rather than the parlor. The question is whether the tendency of the play is to excite lustful and lecherous desire.

"Prostitutes are not so rarely represented on the stage as to arouse the sexual propensities of the spectators whenever they appear.



*Argument by Mr. Bromley.*

"The play may be gross and its characters wanting in moral sense. It may depict women who carry on a vicious trade, and their male associates. It cannot be said to suggest, except to a prurient imagination, unchaste or lustful ideas. It does not counsel or invite to vice or voluptuousness. It does not deride virtue. Unless we say that it is obscene to use the language of the street rather than that of the scholar, the play is not obscene under the Penal Law, although it might be so styled by the censorious."

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Chairman Myers: Is that from the Court of Appeals of New York?

Mr. Bromley: Yes, sir, the Court of Appeals of New York, 258 New York, yes, sir.

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Now, with that legal test in mind, I have undertaken the task of trying to analyze the Government's evidence.

First, I have gone in the first instance on the basis which it seems to me is sound, and that is this. Can we get some statistical idea of just how much out of the two thousand pages in these eleven issues is attacked by the Government? Well, I have taken their citation and their specification and, as I count it, counting each Varga girl picture as a separate item, the Government complains of 90 items in the 2,000 pages—90 separate pictures, cartoons, paragraphs, poems, or articles.

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Now, if you look at all of the nine witnesses produced by the Government, you take the testimony of all of the nine witnesses, as I did last night, and read it and analyze it, you will find that of the 90 items 60 were approved by some one or more of the Government witnesses.

Now, contrast that with what seemed to me, during the course of the respondent's testimony, to be a remarkable demonstration, one so remarkable that if the people were other than the distinguished men and women who they were, I

*Argument by Mr. Bromley.*

5362

should have said the indication was of good coaching rather than sincerity or honesty.

Yet the fact is that out of our 38 witnesses there wasn't a single item which, either on direct or cross, was criticized as obscene, lascivious, lewd, filthy, or indecent by any one of the respondent's witnesses, ranging as they did from the president of Smith College to Congressman Weiss—well, I can't put it that way—to the most humble of our witnesses.

5363

So I am going to point out to the Board and I am going to assume, and I hope it is fair, that there is nothing left of the charge of obscenity as to any one of these 60 items where a Government witness half of the time on direct said, "I find nothing objectionable in those 60 items."

I start right off with the testimony of the first witness, Dr. Karpman, who was asked at the very outset as to what he thought about the "joking" reference in "Shor Nuff" at page 6 of the January issue, and he found nothing objectionable in it.

That same observation of the same witness applies to "Dr. Diddle" in the January issue.

So for the "Sultan" cartoon in the February issue.

So for "Home, Sweet Ruby Street" in the February issue.

5364

So for "The Unsinkable Sailer" in the February issue and those paragraphs about which we had so much testimony and about which the worthy Doctor said he found it only mildly suggestive.

So for the "Sultan" cartoon in the March issue.

So for the April cover where the charge is that the breasts were unduly emphasized.

So for "The Court of Lost Ladies."

Now, there are some of these items like the April cover where there is hardly a scintilla of evidence by anybody that there is any objection to it at all.

*Argument by Mr. Bromley.*

"The Court of Lost Ladies" was approved by several of the Government witnesses.

5365

"The Savage Beast Within Us," Dr. Karpman said was vulgar but not so suggestive as to be sexually stimulating.

In the July issue, the "Esky buy product" advertisement was not objected to by the witness Karpman.

That is true for "Mood for Red Hair."

That is even true of this witness for "Paste your face here," who said that it might be suggestive to a small number of abnormals but not to the average individual.

That is true as to "Offensive on the Home Front," including the use of the word "behind" and the slapping of the prostitute reference therein.

5366

That is true of the hula girl tattoo picture which was approved not only by Karpman but by the Reverend Marshall.

That is true of the Pullman joke in "Ad-libbing with Esquire."

It is true about the joke about "How do you spell feet."

It is true about the November Varga girl, so far as Dr. Karpman is concerned.

It is true about "Golden Mould," so far as Dr. Karpman is concerned.

It is true about the "Undressing is not against the law, lady" joke in "Gold Bricking," in November, 1943.

Karpman, you remember, said that almost anything can stimulate anybody sexually. He admitted that no charge of obscenity could be made against the "Blue Booties" joke in the November issue, nor against either the air raid warden looking in the skylight or the airplane spotter looking through the binoculars.

He also admitted that that girl in the wedding dress at the lathe, with the label, "Boy, that's patriotism," was not obscene nor was it objectionable.

*Argument by Mr. Bromley.*

5368

He also admitted that "The Fall of the Flattering Word," by Gilbert Seldes, had nothing obscene in it.

He felt the same way about the perfume counter cartoon with the two titles, "Baby's Breath" and "Burning Desire," side by side.

He felt the same way about "Dog's Worst Friend."

About Miss Blimpton and the high blood pressure cartoon.

About the two necking cartoons wherein the two young persons were shown necking in the presence of the mother and the cook in the first one and of both the father and the mother in the second one.

5369

About the appendicitis joke: "No, I hate hospitals."

About the whole spread of "Goldbricking" in November, and in that connection it should not be overlooked that even the Government complains only of a total of six jokes out of about fifty or sixty published under that title of "Goldbricking," being excerpts from Army camp papers.

Karpman did not object to the "Pyknic girl" article nor to the U. S. O. smoking pipe cartoon.

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Finally, we find this lead witness, this psychiatrist, did not read all of any issue at any time. He admitted that the current-day advertisement would have about the same effect on the average person as the Varga girl drawings, and he admitted that the old Varga girl drawings which were approved by the Post Office Department in 1941 and 1942 were the same, in effect, as the ones published in the magazine in 1943, and gave the same testimony with respect to the Sultan cartoons contained in the eleven issues; that is to say, that they were no worse and they were of exactly the same character as the Post Office Department had specifically approved for a year and a half in 1941 and 1942.

Now, Father Cartwright was the second witness. I thought

*Argument by Mr. Bromley.*

it was noteworthy that he took occasion under my guidance to denounce the Freudian psychiatrist.

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Well, that is just what Doctor Karpman was, a Freudian psychiatrist, a man who finds sex in anything and everything and believes it to be the underlying motivating force in life.

I was amazed to hear Father Cartwright say that he never heard of the N. O. D. L. list. Yet here is a list of proscribed books under a published Code for Clean Living by that Catholic Organization with an office in this city, who had a representative sitting in the back row, according to the newspapers, for days, with an office and a staff in Washington, and yet no witness was produced by the Government to aid us in determining what they thought about us.

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Father Cartwright, a Catholic priest, it seemed to me had the temerity to come here and give us testimony, although he knew all the time that he had only looked at the magazines, eleven of them, for one hour at the most; that he had read none of the general articles in any one issue and had read none of the articles complained about even.

It seems to me that his general testimony, that he thought the tendency was obscene, is utterly worthless in the light of that cursory and obviously insufficient examination of the material.

The Reverend Marshall was about the same because he spent about an hour and ten minutes on the same issues. His standards, I believe, were higher than those commonly accepted by the average person in this nation today.

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He denounced the newspapers, you remember, for reporting the Errol Flynn law suit out West. He said he found that degrading and tending to lower the moral tone of the community.

*Argument by Mr. Bromley.*

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He had not read a single article in its entirety. He knew very little about what the magazine contained even as to the material complained of.

He deplored the trend of modern times as detrimental to our nation; even thinking that the modern bathing suit was indecent. I mean no criticism of the gentleman except to say, as the good Bishop later said here, that his standards are those of a Puritan and high, and that this Beard should not accept that standard because that standard is that of the most righteous man but not that accepted by the broad community throughout the nation.

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Rabbi Metz was the fourth witness. About all I can say about the Rabbi is that he testified that the joke about "No, I hate hospitals" in his opinion was destructive of morals and ethics and prepared the ground for a non-democratic form of government.

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Now, I think you can forget all about the Rabbi based on that testimony alone, if that is the kind of standard that that man uses, and, of course, he was angry at me most of the time when he testified. He was motivated for some reason by a deep feeling of animosity although he spent only three hours looking at the magazine, did not read any of the articles complained about, read a few of the jokes and the cartoons, read about twelve pages altogether in addition to the pictures.

I say that his standard again is out of tune with the times and his testimony is entitled to no weight at all.

Not only did he express this extreme view of this extremely harmless joke that I read to you, but he said that current sophistication is definitely a danger to our way of life.

Now, in spite of that, he approved as entirely decent the camouflaged soldier picture, a joke in the November Army—



*Argument by Mr. Bromley.*

joke page, and he approved as entirely decent when I called it to his attention that joke in the same issue at page 95 where the Sergeant finally said: "Oh, it ain't against regulations to undress, lady."

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He said on cross examination that while he would want to limit his testimony to jokes and pictures he was quite ready to admit that not all of them, even, were indecent. Like the Protestant Minister Marshall, he thinks that modern bathing suits should be reformed, although he finally agreed that present day *mores* sanctioned their use; nevertheless, he stuck to his opinion that the modern day tendency of women's bathing suits was destructive of morality and symptomatic of a general laxity of our times.

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Then, finally, to give you an example of a self-demonstration of how worthless his testimony was in its entirety, he burst out in cross examination with: "Of course, no witness could fairly express an opinion by taking something out of its context".

Now, he volunteered that statement and that opinion without seeming to realize that that is just what he had been doing for an hour or so here, taking things out of their context, like a paragraph in Nathan's theatrical piece, without realizing that Nathan was only stating something to which he was opposed and which he thought should be abolished.

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So, I say the good Rabbi can very easily be disregarded.

The next witness was the assistant superintendent of schools in this city, Mr. Holmes, who was the fifth witness; and an administrator now and not a teacher.

He found only two and a half hours' time to look at the eleven issues. I was amazed at the readiness and the ease with which he was able to go over article after article and say, "Of course, that is not only not indecent but it would

*Argument by Mr. Bromley.*

5380 be useful in class rooms in public schools to use as a basis for education in current affairs."

And you remember, I think I took him over the whole January issue and he placed the highest stamp of approval, saying not merely that the things were decent but that they were positively useful in his field of youth education in the public schools in this city.

5381 He was frank, I thought, in saying that the reputations of such of our witnesses as Neilson, the former president of Smith College, and Miss Chase, of Vassar, were very good and high, in his opinion, and that he would listen to testimony from both of those people with the greatest respect, because he said, I think, "They would know what they are talking about."

He frankly admitted on cross examination too that while he did not read all of any class of material complained of, many of the jokes were indelicate rather than indecent.

Now, I come to the sixth witness of the Government, the Reverend Rustin, a Methodist pastor, a member of the Board of Education Advisory Committee and student of juvenile delinquency and President of the Federation of Churches in this city.

5382 I confess I was amazed to find any Methodist minister endorsing the Varga girls without reservation, which I believe he did except for the February and June calendar drawings in the January issue, and as to those he said only "I find them suggestive."

Now, here is a Methodist minister who has a broad experience with juvenile delinquency; who is an advisor to the Board of Education; who is produced by the Government as a witness against this magazine; who comes in and says he finds nothing wrong with any of the Varga girls except two out of the bunch of twelve, and as to them his opinion is merely that they are suggestive.

*Argument by Mr. Bromley.*

He very frankly, and I thought with complete honesty and sincerity, said the poem "Benedicts, Awake!" was entirely proper. He found nothing indecent about the hill-billy cartoon about opening up a second front, which so offended Mrs. Wiley.

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He found nothing offensive about "The Court of Lost Ladies", the Gilligan article.

He found nothing offensive or indecent about the picture from "The Eve of St. Mark" and the textual reference to 20 percent do and 20 per cent don't.

And, finally, in the March number he found nothing wrong with the advertisement of the Literary Guild.

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Again, as in the case of the previous witnesses, his examination of the magazine was very slight and he read nothing in its entirety.

Now, I come to the seventh witness, Mrs. Wiley, of whom I can only say that her standards are exemplified by her inability to characterize even the Annette Kellerman photograph as decent.

She finally said she didn't like the pose of the head or the attitude, but was not prepared to pass judgment as to its decency.

It took this humble lady twelve minutes to study six of the eleven issues and to reach her opinion.

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I say that that kind of testimony is not only worthless because of its obvious prejudice and unfairness, but it is worthless and should be disregarded because it represents a type of narrow-minded person whose standards are not those which the law says are the standards to be applied when testing whether a thing is obscene or not.

The eighth witness was Bishop Hughes, again a Methodist. He found nothing objectionable in "Home Sweet Ruby Street". He found nothing objectionable in "Dog's Worst Friend".

*Argument by Mr. Bromley.*

5386

He said the August and September Varga girls are not indecent; that they exhibit a considerable amount of skill and that he would not classify any Varga girl drawing as indecent. This from a Methodist Bishop.

He said the fuel oil salesman cartoon on which our friends have placed so much stress, was vulgar only.

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He said the colored photograph of the night club by Anton Bruehl, "The Folies Bergere", was vulgar only and not indecent, and he, with complete sincerity, and all the more credit to him, said "I am a Puritan, sir", and I suppose he meant by that that his standards were the standards of a Puritan and that he had judged by the standards of a Methodist Puritan.

He found nothing to say in condemnation of the Varga girls, which, after all, are the chief things, I believe, the chief things complained of, in this magazine because they are the greatest in number, numbering, as they do, 21 separate items, and so far as the original citation is concerned, they constitute the majority of all the items complained about.

It was only after they started to think about it a while that they extended the items beyond the 32 or so in the first citation to the 90 now objected to.

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The Bishop's opinion, and this is something that he readily admitted, was that he knew nothing about the magazine, but knew enough about its contributors to know that they were people of very high reputation and character.

Finally, the Dominican monk, Father Moore, whose testimony, I think you remember, elicited a gasp of surprise in this room; who never heard of any of that long list of distinguished authors, like Theodore Dreiser, that I read to him, except—of all people—Havelock Ellis. Other than that, he never heard of anybody in that long, distinguished list of authors.

*Argument by Mr. Bromley.*

However, the chief thing that condemns that witness' testimony clearly is to be found in his prepared statement where he indicates clearly that he has completely misconceived the test to be applied, because you will remember that, with a show of pride, when I asked him whether he was not quoting from the case of Regina against Hicklin, he said, "Yes, it is right here in my notes," and the test that he set up and the test that he relied on was the test of Regina against Hicklin in part, a test which our brief demonstrates has been rejected by all the courts in this country. "The most favored class" test, which no longer has any validity of any kind, but worse than that, if you examine that prepared statement of his you see clearly that he comprehends within the term "obscenity and indecency" things which are offensive to delicacy, offensive through bad taste, offensive through vulgarity, offensive to modesty or refinement.

That is his test. That is not the test which the law requires should be applied in this case. That shows that this Catholic gentleman would condemn as indecent something that he thought was impolite. He goes almost to that extreme.

As in the case of every other witness, establishing a false test, he devoted only two or three hours to a study of the material complained of or to a study of the eleven issues in evidence.

He admitted to me that his purpose was to try to find obscenity, and I take it that he meant by that that obscenity which came within his broad definition.

Even he, however, more extreme than the Puritan Bishop Hughes, said that he found nothing objectionable in the "Dear Dr. Diddle" column about which we have had so much argument and discussion. He said that is not seriously objectionable.

*Argument by Mr. Bromley.*

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He also, it seemed to me, destroyed the value of his testimony by saying at least twice that things which were perfectly good in themselves and good outside of Esquire became bad when put in Esquire.

Now, he said that, without ever having studied Esquire in its entirety to know what he was talking about.

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And just to test him further on whether he was sincere in his opinion or whether he was not, you remember I showed him a good many pictures and that, as to every one of them, no matter how extreme they were, he said, "That is border-line." He didn't want to condemn anything unless he found it in Esquire, and then he condemned everything in it.

I showed him the Carole Landis pictures in Life, which I think everyone will agree is as extreme as anything in Esquire. He said, "Border-line, border-line."

He admitted repeatedly, as we all know is possible, by taking things out of their context, for a skillful prejudiced person to make out of the Bible an obscene document. That has been done in a published book with which you may be familiar, and I charge that Father Moore has done that unfairly with respect to Esquire and his testimony should be disregarded and should constitute no basis to sustain the Government's charge of obscenity.

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Even he said, at page 1761, that he did not mean to condemn every Varga girl drawing, and I hope you noticed, as I did, that he never cited in his notes a single Varga girl drawing as indecent or obscene.

Now, I trust that I have painted the picture of the Government's case and the proof which they might well have brought in the first case against us but which they saw fit to hold back until rebuttal.

What did the respondent do? Produced a total, I believe, of 38 witnesses, not one of whom, as I said, condemned any



*Argument by Mr. Bramley.*

item in any one of the eleven issues, either singly or collectively.

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What points of view were covered by these 38 witnesses?

Well, first of all, we started off by calling psychiatrists, men in the medical field peculiarly qualified to know most about the youth of our nation, and I think it can be fairly said that we called distinguished, reputable men of ability; fairness, and complete impartiality.

You will remember Dr. Clements C. Fry. You will remember that he had had experience in his profession at Yale, Wesleyan, and with students at Smith, Vassar, and other colleges; and that he was familiar with and was now currently re-studying for the Government some 4,000 case histories and studies of young people.

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He wrote the book, "Mental Health in College," and other works.

He said freely in his testimony that in his entire experience he never knew of any patient citing Esquire as a cause of delinquency or corruption or sexual problems or disturbances.

Here is a man who places his stamp of approval on this magazine; a man who at the time he testified and prior there to immediately was living in a dormitory at Yale University, right along with the students, and presumably eating with them in the Commons every day, presumably having a close association with them; the kind of man who lived with the crew during the racing season and whose contact with college youth was of the most intimate sort; who could not afford to come here and express publicly any opinion about the magazine unless he was convinced that it was sound and to him a right opinion.

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He was followed by a Vermonter; by a doctor practicing in Boston, Dr. Tillotson, a consultant to Harvard University and consultant to our Federal Selective Service, who, like Dr. Fry, found nothing indecent or obscene in any issue.

*Argument by Mr. Bromley.*

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The testimony of Dr. Richard Hoffman was stipulated. He was a general psychiatrist in New York City whose experience covered all classes of people.

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Again we point out to you that in this field, the Government had only the testimony of the good Karpman, the net result of whose testimony, it seemed to me, was that there was nothing very serious about the magazine except as to abnormals, and whose attitude was so extreme, it seemed to me, as to destroy his testimony, and I want to refer for a minute to something I did not mention. All this talk that he gave us about voyeurs and peepers and sending fecal matter through the mails, seemed to me to demonstrate a point of view which was so extreme that his testimony is entitled to no weight, especially when balanced by the three distinguished, impartial gentlemen whose names I have cited.

Now, in the second place, we tried to present a representative view of educators and authorities on youth outside the medical field.

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Who could tell more to this Board regarding this problem of obscenity as it affects the education of the children of our land than a man like Professor Osborne of Teachers College, Columbia? Here is a man who had been a camp director, who now teaches teachers and who is an advisory editor of Parents magazine and who was an advisor to the National Girl Scouts; who was a member of the Parents Education Committee of the New York Federation of Churches and who was a director of the New York City Y. M. C. A.; a man who on occasion has been called in by the United States Attorney in New York to advise on problems of obscenity; a man who, so far as I could tell from his testimony, would not shade his opinion for Esquire, for me, for the Government, or for anybody.

*Argument by Mr. Bromley.*

In addition to the evidence we presented to this Board, by stipulation, it is true, the testimony of William Allen Neilson, president emeritus of Smith College and associate editor of the *Harvard Classics* and the editor-in-chief of *Webster's New International Dictionary*.

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The testimony of Felix Morley, president of Haverford College.

The testimony of H. S. Dimock, dean of George Williams Y. M. C. A. College.

The testimony of Mary Ellen Chase, a professor of English literature at Smith College.

The testimony of Marjorie Nicholson, former dean of Smith College and now at Columbia University.

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The testimony of Josephine Gleason, of Vassar College.

The testimony of J. H. Gulick, the head master of Proctor Academy in New Hampshire.

Finally, the testimony of Herbert W. Smith, from the Francis Parker School in Chicago, who is experienced with children of all ages from four to twenty.

Now still from the educational standpoint and still in the field of youth we presented the testimony of Dr. Jacobs of Presbyterian College, and by stipulation the testimony of Major Griffith, the director of the Big Ten, and Clark Shaughnessy, the well-known college coach.

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Against these educators the Government produced the Assistant Superintendent of Schools in Washington, a man, not a teacher, who frequently and frankly acknowledged that Chase and Neilson were tops in their profession and were persons whose opinion was entitled to great weight and consideration by the Board; people who in his opinion knew what they were talking about in the field of youth.

In the third place, having covered the field of medicine, education, and psychiatry, we called two clergymen, a Jewish

*Argument by Mr. Bromley.*

5404

rabbi, Dr. Eiseman, whose experience covers, it seems to me, one of the most susceptible groups of youth, by reason of his long association with the Florence Crittenton League, where are housed delinquents of all classes.

We called also a Presbyterian minister, the Reverend Luchs, from Ohio, with a congregation of Army trainees and young people generally.

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Both of these gentlemen, in contrast to the clergymen produced by the Government, had read and studied all of the material objected to, with what seemed to me great care. They showed a familiarity with it which seemed to me rather withstood completely any attempt to cross-examine them on that basis. They knew what they were talking about and they endorsed every bit of it on the ground that it was not indecent.

Of the Government witnesses, I think I should remind you, of the nine Government witnesses, six as I remember were clergymen, and not one of whom, I repeat again, was willing to condemn all the material, nor not one of whom had read even all of the complained-of material, and all of whom would pick out only a few sentences and pictures and, based on that sampling, talk about the tendency of the magazine.

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Now, in the fourth place, we produced two women to show the women's point of view, especially in the field of social work. Mrs. Cook, from New Haven, the executive secretary of the Connecticut State Welfare Association, and the chairman of the Committee on Children and Youth in Wartime of the Connecticut War Council.

You can remember her testimony, and my good friend's simulated embarrassment about questioning her about certain things, and yet of course he must have known, as we all know, that the very fact that she came here meant that

*Argument by Mr. Bromley.*

she was prepared, without any embarrassment, to be questioned about anything, whether it be "son-of-a-bitch" or anything else.

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Her attitude was that it was not indecent and that she was here and expected to be cross-examined about it, and there was no occasion for that simulated delicacy.

The second woman witness, Mrs. Weissman, of the New York City Committee on Mental Hygiene, and former case supervisor of the Home Relief Division of the Department of Welfare of the City of New York, under Commissioner Holson; her work brought her in contact with the poorest classes of our people; people on home relief during the depression.

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Now, against these two ladies, the Government produced Mrs. Wiley, a woman's equal rights proponent, so narrow in her views that she could not give a clean bill of health to Annette Kellerman's bathing suit. Her views were such that, as I have said, her testimony amounts to nothing.

Well, I think it is fair to say that we were not satisfied with presenting representative cross-sections of public opinion but that we evidenced a desire to show that this magazine could pass the toughest possible test, almost the toughest possible test, the professional test of the New England Watch and Ward Society, so we went to that Society.

I suppose everyone will admit that it is and has been for years the most rigid and unyielding and uncompromising censorship body in this country.

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I was amazed in hearing Mr. Croteau testify as to the amount of day-to-day censorship that seems to go on in many New England cities, particularly Boston. I was amazed to hear him say that he spent six nights out of seven every week, week in and week out, visiting night clubs and stage shows and exercising a constant supervisory censorship over what is presented, and a constant supervisory cen-

*Argument by Mr. Bromley.*

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sorship over the hundreds, or at least I think he said he examined 65 or 70 periodicals a week, he and his staff.

Now there was a man who was an expert in filth and dirt and decency and indecency, by training and occupation. That was his job, to know what was dirty and what was not, because he was the executive director of that Society. He spoke not as an individual, as the Government witnesses, some of them, were careful to say they did.

This fellow came down and said "I speak not as an individual, but with the authority and the express authority of the New England Watch and Ward Society, two members dissenting."

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Now, I say that testimony merits a careful re-reading because if there were any substance to any part of this charge of obscenity or indecency, there would be the place to find out about it, from Louis Croteau.

Now, to make doubly sure that these witnesses really represented what they were supposed to represent—and after all, that was public opinion—that is what we were trying to prove here—to prove that the contents of these magazines were acceptable to the public generally, that we had not exceeded permissible limits in frankness of opinion and expression—but to make doubly sure of that we took what the Post Office at the time had attacked as the worst thing in the magazine, the twelve Varga girl drawings, and we put them in a group and we fenced them off—we had Crossley, this expert, fence them off in the magazine—you remember he showed how he taped up the magazine leaving exposed only the twelve Varga drawings—and he took them out to make a test of public opinion.

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I was impressed with the scientific care and the numbers of indicia of reliability which that test was demonstrated to have by his testimony. It seems to me that we not only



*Argument by Mr. Bromley.*

went to this independent authority and presented the problem in the way most calculated to have the strongest impact on a member of the public by showing him the group of twelve altogether, but we stacked the cards against ourselves, purposely it seems to me, because we were careful to avoid a poll of Esquire readers.

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Now, I say that because the testimony shows that 18 per cent of our readers are in cities over 100,000. This survey that Crossley took was not limited to cities over 100,000, but went right down to cities of 2,500.

And then, not satisfied with that, and thinking possibly that we might be unfair in this regard—disregarding the farmers, although it is hard to take a farm survey in the short time we had,—he went into the country and took a sampling of the opinion of farmers.

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Having collected the results of the interviews, it seems to me we stacked the cards against us—before I come to the result—we stacked the questions against us because we not only said “Lady” or “Gentleman, do you think these pictures are obscene or indecent,” but we said “Would you be willing to have a magazine in your home which contained these pictures?”

Now, I can't think of a fairer question to ask, or one more calculated to make a person think about his answer to the first question than the second question: “Would you have this kind of thing in your home?”

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Having asked that question along with the question on obscenity; and finally, it seems to me we stacked the cards against us in tabulating the results, because, as Crossley told you, any person who said “I don't think they are obscene, but I don't think my wife would like this one, or I don't think my children ought to see this one,” was tabulated as a vote of indecency.

*Argument by Mr. Bromley.*

5416

Crossley said that any possible qualification on the answer was tabulated against the decency of the pictures.

Now, I don't know what could be fairer than that.

And what were the results? You remember that 77 per cent as measured by that test, said those pictures were not indecent, and about the same number said they would have no objection to having the magazine containing them in their homes.

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You will also remember that due to a fortunate circumstance, which we did not originate and which we did not pay for and which we didn't know very much about before we got here, our distributor, the conservative Curtis Publishing Company, having been experienced in this kind of thing and having done this kind of thing for years and for its own benefit, and having an expert organization, took a poll of its own. I was surprised when I looked at their poll and it is in evidence, to be quickly confirmed, and I was surprised at the skill and care manifested by what they did as being in every respect comparable to the skill and care of Crossley, whose reputation is much greater and is nation-wide, if not world-wide.

The Curtis survey, it seems to me, in other words, is just as scientific a survey as Crossley's.

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Ben Allen, the witness, testified he did it because he wanted to find out for his own benefit, since the Curtis Publishing Company is charged with the responsibility—if there is anything wrong about the magazine they won't distribute it long, you can bet your life. His result was 80 per cent that said the pictures were not obscene. He said three questions were asked: (1) "Are they obscene?" (2) "Would you have them in your home?" (3) "Do you think they are corrupting the morals?"

*Argument by Mr. Bromley.*

80 per cent of the people interviewed said they thought the pictures were not indecent.

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Now, these two surveys covered a carefully selected sample of over 7,000 people, and Crossley's testimony is that you can tell accurately to within three percentage points from a sampling of that size, what a poll of the 130,000,000 people in this country would turn out to be.

Now, the Board ~~may have wondered~~—let me turn from those surveys for a minute—the Board ~~may have wondered~~ why we kept on introducing these other magazines. Was our purpose, as counsel has said, to try to show that others are as bad as we are? Not at all. That would not be any defense. He must know that we realized that.

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We thought, however, it was one way, and a very complete and convincing way in which we could show the *mores* of the times.

If we got large enough samples from several competing magazines and we found that they reviewed this show "Star and Garter" and talked about erotic dances, that they published the same kinds of photographs of Spanish dancers dancing erotic dances in suggestive poses, with about the same number of clothes on that our pictures disclosed, that that was done regularly and consistently, we felt that that was an indication that public opinion sanctioned that sort of thing, that we were not out of step with the times, that we were in step with the times, and, that if a comparison of what we have done with those other magazines shows that we have not done anything worse, it is material, I believe, to show that what we have done is commonly accepted.

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We didn't go to questionable magazines. We have not introduced the Police Gazette, or Laff, or Funny Jokes, or whatever they are. We have tried to go to the most conservative and certainly most reputable magazines that we can think of.

*Argument by Mr. Bromley.*

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And the reason for the large number was merely to refute the charge which otherwise would have been made against us, that we were taking only isolated instances and it was not fair to point to Life which may have slipped on one or two occasions.

So not only did we produce a fair sampling of competing magazines, but we called witnesses to survey what was current and accepted in periodicals in the field of advertising.

What about these soap ads and stocking ads and underwear ads and bathing suit ads and cigarette ads?

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And we called Lee Bristol, of the Bristol-Myers Company, who spends five million a year in advertising, and Philip Lennen and Robert Orr, of Lennen & Mitchell, an advertising agency. And you heard their testimony as to what degree of exposure or nudity or suggestiveness was currently being used in the advertising field.

And then we put on Ben Allen, of the Curtis Publishing Company, an outstanding circulation man in the magazine field, and tried to have him survey generally, by putting in through him other magazines and other photographs, to show what was currently being done in the magazine field.

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And finally, and most significantly it seemed to me at the time, and again on reading his testimony, we brought in Channing Pollock to explain to you the change in our customs which has taken place over the last half century as he had actually witnessed it, and I cannot forbear calling to your attention the testimony which he gave us with respect to his personal experience with the Shaw play, "Mrs. Warren's Profession".

Here we find that some years ago he, as a member of the first audience of that play, which deals with the life of a prostitute, was thrown out into the street by the police of New York City along with the entire audience in a New

*Argument by Mr. Bromley.*

York theater witnessing the New York opening of that play, the lights turned off and the theater closed in the middle of the first act of the play on the ground that it was obscene. And fifteen years later this same witness, Channing Pollock, is again a member of an audience in a New York theater, in which the same play, "Mrs. Warren's Profession", the life of a prostitute, is presented without objection to an audience of clergymen, Mr. Pollock being the only non-clergyman in the house.

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Now, the Post Office has complained of our use of language and, it occurred to us who better in the world was there to come and explain to us whether or not the language used in this magazine was obscene and indecent, than Henry L. Mencken, whose monumental work "The American Language" will probably live long after he is dead.

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Mr. Mencken cleared every word against which the Post Office Department has complained from "son-of-a-bitch" to "behind" to "backside", and all the rest.

What about the reference to what the Post Office did?

You would think from hearing Mr. Hassell, that we came down here and tricked the Department into censoring our magazine and then acted so dirty about it that they finally had to throw us out because we imposed on them. Well, Mr. Hassell knows that is a general policy that applied to many magazines. They tried it for a while. It was not done just for Esquire. They did not have trouble just with Esquire. They tried it with such magazines as Time and Life and when they changed their policy he said they wrote us a letter saying they couldn't do it any more. That was a general letter. That was sent to everybody. That merely announced that they had changed their policy. The burden of advanced censorship became unworkable and burdensome, as they should have known it would, and they had to give it up.

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*Argument by Mr. Bromley.*

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We were not the cause either of inaugurating or discontinuing that policy. It was not designed for our benefit.

Now, what is the significance, if it has any, of the action which the Post Office Department took on 19 separate occasions, and in writing, to approve this magazine throughout all of 1941 and seven months of 1942?

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Well, it seems to me again that its only materiality is that it has some persuasive effect as to what the proper standard to be applied is. It is ridiculous to say that Mr. Miles or any one of his assistants made a mistake and overlooked the Varga drawings, they didn't know what they were doing, that it got away from them.

The evidence is that Miles sat down here with our editor and rewrote verses, and the evidence is that not once but many times the words of the accompanying verses were changed on the Varga girl drawings. It seemed to me sometimes it made them worse. That's immaterial.

The point is that their attention was directly pointed at these drawings for 19 consecutive months.

Of course, they knew they were there, of course they knew what they were and all about them, and of course they approved them because they felt that they did not exceed current standards of morals.

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That is true of the Sultan cartoons. There are in evidence all of the Sultan cartoons which this Department approved. Of course, they didn't overlook them. They knew what was there. And the ones complained of are no worse and no different than the ones which these people specifically approved.

As Mr. Wentzel testified, not a single one of those 19 issues was ever declared non-mailable at any time throughout the whole 19 months.

Now, I say that that in itself is evidence that the Post



*Argument by Mr. Bromley.*

Office Department knows what the standards are, and they knew it then and know it now. 5431

And it makes me wonder whether some outside sinister force has not brought about this change, this sudden change, to reverse their position and attack things no worse—indeed, I don't think as bad—as the 19 issues which they specifically approved.

No one knows what current moral standards are better than the Post Office Department. As the Chairman phrased it one day during this hearing:

"As I understand," said he to a witness, "when you refer to *mores* you mean the habits, customs, traditions, institutions and other indefinables that make up conduct in the life of people in a given time and place." 5432

Now, I say to this Board that is the standard that the Post Office Department through the Solicitor used in approving Esquire for a year and a half. The standards have not become more rigid since that time. They are the same. If anything, they have relaxed a little. Nor has the magazine changed since that time. Only the Post Office has changed; and I think that is a complete demonstration of the lack of merit in the present proceeding.

In his opening, Mr. Hassell's continued reference to the test under the statute, as I understood him, was that to be ~~mailable~~ second class the matter must be for the public good or concern useful knowledge or be designed for the public good—referring to the Congressional debates. 5433

Now, there is not a case in the books anywhere at any time ever decided, which even suggests that coarse and indelicate matter is ~~non-mailable~~ or which contains any suggestion of the sort which he makes, that only matter which is useful and beneficial is of information of a public character.

Certainly, we know that the courts have decided that in

*Argument by Mr. Bromley.*

5434

formation of a public character need not be limited to current information, because we find at page 22 of the brief a decision of the Court of Appeals in this District, in *Payne* against the National Railway Publishing Company, holding the publication *The Railroad Guide* entitled to second-class privileges, the following statement:

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"The citizen who desires to have his publication carried in the mails of the United States as second-class matter, and who has fully and fairly complied with all the requirements of the statute in regard thereto, has acquired a positive legal right to have it so carried; and his right will be enforced by the writ of mandamus, if the Postmaster General arbitrarily or without valid legal reason refuses to receive and transmit such publication. Of course, the Postmaster General and his subordinates are required to use judgment and discretion, and it may sometimes be a matter of much difficulty to identify a publication as one included in the category prescribed by Congress. But their discretion is limited to this question of identification; and it is not competent for them to impose additional requirements beyond those specified in the statute."

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It seems to me that is just what Mr. Hassell is trying to induce you to do, to define information of a public character as being useful, helpful, beneficial information.

I think material which entertains is information of a public character, just as much as the current news items carried in a magazine like *Time*.

Under the words of the statute, under the obvious intent which Congress must have had, magazines like *Cosmopolitan*, *Red Book*, while largely devoted to fiction, constantly contain articles that are just entertaining, that are not useful, they don't educate anybody, but they give pleasure in reading. It was never the intention of Congress, looking

*Argument by Mr. Bromley.*

at the words they used, it was never reasonably intended to say that only a magazine like Time is intended to second-class privileges.

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Now, in conclusion, I expect that this Board will hear that the continued publication of this magazine will have a destructive effect upon every American home of decent people in this country. It may even be suggested that Esquire is undermining democracy itself.

Now, if there were any truth or validity to an argument of that kind, Esquire would not be here, it would be in a criminal court, where if the argument is sound it should be.

Yet, as you know, there are dozens, indeed scores of criminal obscenity statutes throughout the breadth and length of this land. At no time within its ten-year history, and certainly not today, has this magazine ever been prosecuted by any public authority anywhere for obscenity or indecency.

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If this argument which I anticipate will be made to you is sound, do you think men like Fry and Tillotson and Pollock and Neilson and Chase would be in the position of defending the magazine?

And if there is anything to the argument that this magazine of sophistication constitutes a threat to our form of government or to morals, don't you think the Solicitor could have found out of this great city in which must reside thousands of men of knowledge, experience, distinction, and ability, some one or two who could have come here and told us about it?

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Their failure to do so speaks louder than words.

And yet, I submit to you, that in order to take away our second-class privileges you must find that we have violated a criminal statute. Whether you must apply criminal standards or not makes no difference. Whether you are

*Argument by Mr. O'Brien.*

5440 entitled to decide it by a fair preponderance of evidence or beyond reasonable doubt, makes no difference. In order to deprive us of our privileges you must find we have violated a criminal statute.

The charges, I respectfully urge, should be dismissed and this Board should report that the publication should not be deprived of its second-class privileges.

Chairman Myers: We will take a five or ten minute recess at this time.

(Whereupon a brief recess was taken.)

5441

Chairman Myers: Proceed, gentlemen.

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ARGUMENT BY MR. WILLIAM C. O'BRIEN.

Mr. O'Brien: Mr. Chairman and gentlemen of the Board: If there is anything to be said on behalf of Esquire in this proceeding, I think it has been well and ably said by Mr. Bromley. Nothing has been neglected in his presentation of the defense. It has been most eloquently and thoroughly presented.

5442

I have listened with great attention and with great admiration for his ability in presenting his case. But I fail to see that it provides an excuse or an answer, an excuse for the things that Esquire has done, or an answer to the charges in this case or the evidence in the record.

Now, at the outset, Mr. Bromley, I think, referred to definitions of obscenity. The definition of obscenity in *Regina versus Hicklin* is still accepted and acceptable in the courts of the United States. In that I think he made an error, probably an unconscious one.

The fact of the matter is that *Regina versus Hicklin*

*Argument by Mr. O'Brien.*

is still accepted as the doctrine by the Supreme Court of the United States as shown by *Dunlop v. United States*, 165 U. S. 486, and since that is the doctrine accepted by the Supreme Court of the United States as the test of obscenity, insofar as the use of the United States mails is concerned, it is binding upon this Board and upon this Department.

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It is true that the Circuit Court in New York, and perhaps some other circuit courts and perhaps some other State courts—I don't know all the decisions—may have elected to ignore that doctrine, but that has not been approved by the United States Supreme Court.

Now, gentlemen, you have before you and you have had throughout this hearing the eleven issues of *Esquire* upon which these charges are based. You have had before you the memorandum setting forth the charges, including the second one with respect to information of a public character, the fourth condition of the second-class statute, that a magazine must be originated for the dissemination—and published—for the dissemination of information of a public character or related to literature, to sciences, or the arts, or some special industry, and that fourth condition also excludes as enterable, second-class matter which is devoted primarily to advertising.

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In his testimony which I heard briefly, because I was not in the hearing room all the time, I heard Mr. Gingrich give the history of *Esquire* magazine and, according to his story, this magazine or some immediate predecessor, was originally originated for the purpose of advertising. And when they found that they could sell it on the newsstands and not in clothing stores, they attempted to give it a character which, forsooth, would enable any self-respecting male to walk in and carry it out under his arm so that he might

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*Argument by Mr. O'Brien.*

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not be accused of being a fop or one who thought more of dress or as much of dress as a woman.

In order to impress that character on the magazine certain matters were introduced of a manly character, and, of course, one of those things which would show that a man is a man, according to the Esquire standard of manliness, is the ribald joke, the indecent cartoon, the almost naked woman's picture, so that any decent man could carry it out under his arm and say "I am not buying this to see what is the latest fashion in ties, but because I am a very male man and am fond of looking at women's pictures and reading ribald jokes."

5447

That leaves the immediate impression that Esquire was really originated for the advertising. It carries a great deal of advertising.

According to the poll and the text, only 35 per cent is advertising.

Now, then, let's come to the text. What is the text around which so much tinsel has been wrapped? What is that text upon which such sanctity has been bestowed by counsel, and by some of his witnesses? Do you find the text to be the whole-souled purpose of that magazine; do you find the text to be the inescapable and inevitable characteristic of that magazine?

5448

I don't. I regard that text as the front. I regard that text much as I used to regard these fronts put up by the gambling houses and liquor dealers in the old days, when a flower shop was a front for a roulette table in the back, or whatever went on behind the scenes which was illegal. The real purpose of the establishment was to carry on naughty sales or gambling, and not to sell flowers.

I might say this attempt is to put a public library in front of a copy with dirty cartoons, risqué jokes, pictures



*Argument by Mr. O'Brien*

which are suitable. I think, according to what I used to see and used to read, for display in back of a bar in a saloon, but not in a literary magazine, not in a magazine devoted to public information, not in a magazine intended to be devoted to information of a public character or related to literature.

I have never seen such things in any other magazine, not even in the Smart Set many years ago when it was noted as a very liberal magazine.

Let's take Esquire for what it shows itself to be, let's take Esquire according to its own symbol, let's take Esquire according to its own characterization.

Who represents Esquire better than Esqy? What do you find about Esqy on every cover and every situation? A lascivious, leering, lecherous parasite, a dude who spends his time ogling women, not a soldier or a civilian with any useful occupation, but just a mere philanderer according to his own activities as displayed by Esquire.

Esquire typifies the man who does not go to war, the man who stays home and plays around with the women while the soldiers go to war, the man who, according to the covers of Esquire, is engaged in trying to seduce the women who might be interested in soldiers, as you can see from looking at the May issue.

Here is Esqy peering over the fence, lecherously ogling a girl who is in the arms of a soldier, and who might be his sweetheart.

We can go to another cartoon of the same character. Esqy here is dressed in a sailor suit. Is he engaged in performing the duties of a sailor? Oh, no, no. He is engaged in making these lecherous grimaces at a couple of women who are apparently practically nude. He is engaged in pleasure, not the performance of duty.

*Argument by Mr. O'Brien.*

5452

Come to August. What do you find? You find Esquire, that symbol of Esquire, entertaining a girl, while the sergeant who apparently is the friend of that girl is looking on in amazement and anger. That's Esquire.

I urge upon the Board, if it has the time to read Esquire from cover to cover, to read the nearly two thousand pages that have been presented here so often. I ask if you can find anywhere where Esquire has spent a single dollar, where Esquire has spent a single nickle on advertising war bonds, for example, since it is such a great patriotic publication.

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You would think they would do something for the United States Government besides asking for a subsidy.

Now, Mr. Bromley has discussed at some length his interpretation of the evidential situation in this hearing. He has referred to numerous witnesses both for Esquire and for the Department.

Mr. Bromley's summing up of the situation is this: all of the witnesses for Esquire completely and unequivocally endorse the magazine as a fine publication.

5454

That is a strange thing. Strange that among so many people there would not be some diversity of opinion. Honest men may differ about things, even about things they like, even about things they are willing to have circulated. Why are all those witnesses so universally of the same opinion and so completely willing to endorse Esquire as a publication to be disseminated at a second-class rate?

It suggests to me that either their examination to which Mr. Bromley is pointing with great pride, has been superficial, or that they have accepted the suggestion that Esquire is what they say it is.

It is easy to accept suggestions. It is easy to have an article by a well-known writer, whether it be George Jean

*Argument by Mr. O'Brien.*

Nathan or William Lyon Phelps or Paul Gallico or anyone else, pointed out to you in order to make you believe that Esquire is essentially what it is said to be, what they say it is.

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A great deal has been said about the Government witnesses. A great deal has been said which is not correct. A great deal of this testimony has been placed upon the record, as I understand it, and as I listened to the testimony of our witnesses.

I think Mr. Bromley has the feeling that when a witness didn't come out and say "This item is indecent", that he has the right to say he approved it. That isn't fair, that isn't fair at all.

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It is true that the Government witnesses did not have the indoctrination nor the time to devote from their regular duties or occupation to read the eleven hundred pages, or whatever it is, as his witnesses seemed to have. These busy men and women who have important jobs in various institutions, private or public, seemed to have a lot of time to take away from their official and usual occupations to read Esquire from cover to cover.

My witnesses did not. They had jobs to do for the public. But they did this. They examined Esquire and those who had but brief opportunity outside the hearing room, as you know, were confronted with the matter on the witness stand.

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It is not fair to say that Mrs. Harvey Wiley only saw Esquire for twelve minutes. She talked to me, I would say, for less than twelve minutes. And I was not attempting to cover all these items in twelve minutes. I am not quite as stupid as that.

What I did was to confront these witnesses on the witness stand, who had not had sufficient time to examine the

*Argument by Mr. O'Brien.*

5458

magazine, with the items concerning which I asked them and concerning which no arrangement as to their testimony had been made before they took the witness stand, so they formed their ideas of the cartoons presented to them or the text that was read to them honestly and openly before counsel and the Board, and not before they came here.

There was no indoctrination, no prompting or conference in which they agreed that they would say anything but what they honestly believed.

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Now, which one of those witnesses said Esquire was fit for public distribution? There was a difference of opinion on certain items, an honest difference of opinion. I expect that between the three gentlemen sitting on the bench there may be a difference of opinion on items. But they were agreed on this thing, that Esquire as an entity, Esquire as a whole, Esquire as a magazine, is not information of a public character, but as a whole it is improper material to be distributed amongst the youth, as well as the adult people of this nation.

In fact, they agreed Esquire is not a second-class magazine.

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Now, if people want to indulge in looking at cartoons or in reading matter which deals with the sexual side of life in a very detailed and lascivious way, we are not here to interfere with that. If they want to buy it in books or pamphlets, if it can be sold wherever they live, why, let them pay the price for it. But don't ask the taxpayers to subsidize the distribution of this matter through the mail for the enrichment of the publisher.

Congress never intended that.

We are not trying to reform public morals. We are simply examining the legal question, whether it was the intent of Congress that Esquire or any similar magazine, for that

*Argument by Mr. O'Brien.*

matter, should be entered as second-class matter, that part of its mailing cost should be paid by the taxpayers.

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Does it meet the rigid standards, the must standards which are set forth in the second-class privilege act? It is the position, of course, of Government counsel that it does not. It is the position which Mr. Hassell has explained to you and which you already knew, I suppose, from the progress of the case, that Esquire is not a magazine originated and published for the dissemination of information of a public character.

It might as well be written in Chinese. I expect the drop in circulation would not be material if it was written in a foreign language that most of the readers couldn't understand, so long as they kept the captions of the cartoons in English, left the Varga girls to be seen, and so long as risqué jokes could be understood in some way.

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They might as well have reprinted Chaucer as Theodore Dreiser or Maurice Maeterlinck or any one else, reprinted it in the old English which you can scarcely read today, because the magazine has found it to be a necessary pattern of its publication to put in every issue the same material or the same type of material which has been pointed out to you.

That is the merchantable part of the publication which it finds brings the money in upon which it subsists.

5463

Now, that is not information of a public character.

I heard a great deal about pin-up girls. I think—I know I would agree with Mr. Hassell that men do not pin up this type of matter in their sleeping quarters or elsewhere merely to enhance their idealism of womanhood. I will show you, for example, by contrast what I mean.

I once knew a young man who was very fond of a young lady who lived in a distant city, and he had a picture of

*Argument by Mr. O'Brien.*

her. He happened to be my room-mate down in Tennessee.

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We often had men come in from various schools—he was a student at the State Normal—we have often had boys and men come in and sit around and play flinch and black-jack and talk and have bull sessions. Of course, sex creeps into those and, of course, ribald language creeps in.

This young man, whenever he expected such a thing, would not even leave his sweetheart's picture exposed. Why? Because he idealized womanhood.

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That is just the converse of this type of glorification or idealization. That is the kind of pin-up girl that builds a man, that builds his morals, but not this type. Not this type of woman, stripped down to her almost naked flesh, posed in alluring poses in colors and drawings designed to concentrate the idea on the physical side of woman.

Counsel seemed to be amazed the other day when one of the witnesses denounced the cartoon where the woman is at the lathe and the comment is made "Such patriotism. No honeymoon and so on. The witness said "That isn't marriage necessarily."

He seemed to be surprised. Well, we should not be surprised, gentlemen.

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There used to be a saying—I don't know whether it is still current or not—that marriages are made in Heaven. There used to be an idea, and I think it is still pretty prevalent, that men and women are joined together spiritually as well as physically in marriage and anything that contaminates the spiritual union is as destructive of marriage as any contamination of the physical union. That is also public morals today.

Is Esquire the symbol of the grade of public morals to which the United States subscribes as a whole? I think not.



*Argument by Mr. O'Brien.*

The whole effort of the defense has been to make you believe that this sort of thing is acceptable to every man, woman and child in the United States except the narrow-minded ones of whom, of course, there must be a great minority according to their polls and so forth.

But the fact of the matter is, and you gentlemen know it as well as I do, that public decency is at a much higher level than what they pretend, that public decency is offended even today by some of the bathing suits that they set forth as being an indicia of what we are willing to accept, that public decency is not necessarily reflected by the type of pictures we find in other publications which are declared by them—and I will accept the term—to be reputable.

If I want to read certain magazines or certain newspapers I have to take what they have in them or else do without them. If they insist on putting a picture from a burlesque show in there, I have the election either to say "I won't read that at all, I won't get the current news, I won't read anything," or else I will have to take what they give me. It is like going into a store and buying some food, part of which you don't want but which you have to take. There is wastage in everything and here is wastage in publication.

It is not the standard, it is not the norm, it is not the measure of decency. A lot of it is foisted on people.

A great deal has been made of the fact that the Very Reverend Rabbi Metz found some matter in the Reader's Digest which he thought was obscene. Counsel didn't remind you, but I do. Rabbi Metz says he reads the Reader's Digest. What is he going to do, refuse to read the articles in there because there are some jokes in there that he doesn't have to read? Not at all. He has to put up with a certain amount of what is thrust upon him.

*Argument by Mr. O'Brien.*

5470

I say that is not the norm or the standard.

Mrs. Harvey Wiley was speaking not only as a woman, but I think she typifies the viewpoint of the American mother. She has two sons. Millions of other women in the United States fortunately have sons who have the ability and the physical welfare to serve. Do you think if you were to take a poll of those mothers or the wives of those men, some of whom I know, that they would say that any great loss would be suffered by their husbands or sons by depriving them of pin-up girls or Sultan cartoons or these lascivious jokes?

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Imagine a man putting up a glorified American girl in the same atmosphere with "son-of-a-bitch" and "crap" and all the other dirty language you find in here, in the same atmosphere with poems which make a joke about virginity and continence, which indicate that women may be bought and sold.

Oh, yes, gentlemen, the moral articles, the article about burlesque and the article about prostitutes. That was Esquire's attempt to reform something, I suppose. They are going to reform burlesque.

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You know what scandal is, gentlemen. A person runs around and says, "I saw so and so doing so and so and it was dirty and it was obscene," and the details are spread out before you in all their sordidness, and then he throws up both hands and says, "I wouldn't do anything like that. I disapprove of anything like that," and then he goes on to everybody spreading scandal and spreading it and spreading it, and spreading dirt and filth under the guise of disapproving of it.

That is the same type of article as Gallico's article, the same type of stuff.

And in the Night Court scene. Articles could be written

*Argument by Mr. O'Brien*

about the Night Court and I am sure articles have been written about the Night Court, which expose the dangers, the sordidness, the horribleness of prostitution, how women are degraded and lowered by it, how the public suffers from it.

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But it can be done decently. It doesn't have to be done indecently, and if it is done indecently there is no excuse for it.

The same thing about burlesque.

Now, there is no basis for counsel's contention that you can just disregard the testimony of these Government witnesses. He has not reminded you, of course, of the numerous items which every one of them said were filthy or indecent or vulgar or indelicate or in bad taste, as they interpreted those terms. And of course when they used the term "indelicate" or "in bad taste" they were referring to indelicacy as a matter of discussing sex or bad taste in the matter of discussing or exhibiting sexual matters.

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Esquire's reputation has been before Boards in this Post Office Department more than once. In fact, every cheese-cake magazine that came in here to defend itself on charges of indecency pointed to Esquire as their patron saint. Many of those publications were found not to contain information of a public character. Many of the publications readily admitted and quit their second-class mailing privileges. All had the same patron saint, Esquire.

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Esquire is a more expensive publication, it costs four bits to buy it, fifty cents, if you like, fifty cents to build up the morals of the United States or tear them down, if you please. Fifty cents which I think would contribute more to national welfare if it was spent on two War Stamps.

And we are asked to believe that this publication has the endorsement of congressional approval under the statute.

*Argument by Mr. O'Brien.*

5476 Suppose, for example, gentlemen of the Board, that there was no second-class mailing privilege whatever. Suppose that it was and continued to be the policy of Congress to subsidize publications which were devoted to information of a public character, to art, literature, science, and the other things specified in the statutes. Suppose those publications had to go before a committee of Congress every year and show their performance.

5477 Do you think Esquire would get a subsidy from Congress on the basis of what you have seen here? I am confident that it would not. Congress would not approve of any such subsidy and neither does it, in my judgment, as I interpret the law, approve of the indirect subsidy through the second-class mailing privilege. That is not its intention. That is not the statute which Congress passed.

You have been told before and, if I may, I will repeat it, that the purpose of the statute was to build up the morale of the United States, to build up the Nation as a stronghold, to convey information to the readers of newspapers or science and art, or leading publications, which would make America stronger, more capable of defending itself in building a great economy, a fine social life. This publication does not serve any of those purposes.

5478 The articles in here—well, you read them—just read all of them.

Some of them you probably could go to sleep reading. Many of them are uninteresting. Many of them are stupid. Many of them are pointless. Many of them are just space fillers.

If you want to examine them, there are a few here and there that you might find of interest to you. There are a few here and there that are good articles, but by and large the whole publication is not of the extraordinarily superior

*Argument by Mr. O'Brien.*

worth-while educational character that counsel for Esquire would have you believe.

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The statute, I was going to say, must provide for matter which is for the welfare of the Nation. Congress could not and would not pass a statute constitutionally, I believe, to subsidize anything which might be against the national interest, and when Congress passes a subsidy law, whether it be for magazines or air mail or ocean mail or anything else, it looks upon that with a great deal of jealousy and with a great deal of care, and expects the Government officials to carry out their duties in that respect.

It imposes upon the Government official a great responsibility. The Postmaster General can neither expand nor restrict the conditions. They made that very obvious in this statement. They put the word "must" in there. The most emphatic language that Congress can use. This publication must be originated and published for the dissemination of information of a public character.

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That does not mean that it is going to be originated and published with some information of a public character and the rest of it devoted to material that is unavailable. It must be substantial. It must be completely devoted to the purpose stated by the statute and required by the statute before the Postmaster General has the right to allow it to enjoy the subsidy.

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Now, some great stress has been laid upon what might be termed the mistakes of the Post Office Department in the past.

The case of Houghton vs. Payne deals with a problem involving second-class mail. The publishing house published a series of pamphlets every month, some of which I think are still around the Post Office Department. It used to be in the Third Assistant's file. The Riverside

*Argument by Mr. O'Brien.*

5482

Series of Literature. You could find in there reproductions and reprints of some of the finest writings of the American poets and the American essayists and the American fiction writers. It was certainly unquestionably devoted to literature, and several Postmasters General permitted that publication to go through the mails as second-class matter, until one came along and said, "No; I don't think this complies with the requirement of the statute. They are merely reprinting booklets and calling them magazines." Several Postmasters General had allowed it to go on, and this one said "No," and the Court said, "Well, this one is right, and the fact that other men made mistakes, even though contracts had been entered into on the basis of these previous rulings, did not give this publication the right to enjoy the second-class mailing privilege," and it was taken away from them.

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Now, there was no question of any indecent matter. There was no question but what the matter was fine, but so jealously did the courts guard the second-class privilege, so carefully, if you like so narrowly did they interpret the statute, that they took away from the Riverside Press its second-class mailing privilege.

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This publication certainly can't compare with the Riverside Series. This publication, as I have said again and again and you have heard it for three weeks, is full of cartoons, jokes, and pictures which are certainly not claimed to be literature or art or science.

Now, I have heard something about its morale-building value. There is no doubt about it that the morale of the Nation and the morale of its fighting men are of the utmost importance today and every day as long as the Nation survives, and everything that could be done should be done and will be done, I know, to preserve that morale.



*Argument by Mr. O'Brien.*

What preserved the morale of the women and children in London when Hitler was dropping bombs on them? Was it a magazine like *Esquire*? Was it pinning up dirty pictures on the wall? The answer is obvious.

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What preserved the morale or destroyed the morale of France? A low moral standard, a low, common ~~lack~~ of patriotism which let that nation go to pieces.

I don't think that *Esquire* could destroy the morale of the United States, not while there are women like Mrs. Wiley or the other gentlemen who appeared on the stand, as representative of not merely themselves, although we may say they spoke for themselves, but representatives of untold millions in the hinterland that we could not bring here and present to you.

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The picture which *Esquire*, by its sneering and highly loathsome humor, is directed at the chastity of women and marital fidelity, will not build morale, will not add to common decency. That is the kind of thing that breaks down the morals.

When you continue to subsidize *Esquire* so that it can drag everyone down to that level, Congress never intended to do that; they never intended that that should be characteristic of information of a public character. In fact, the few words that were ~~spoken~~ in the debate showed to the contrary, as I have said often and no doubt tiresomely.

5487

Now, we have had some reference to polls. Polls, gentlemen, are very deceptive things. Need I remind you of the famous Literary Digest poll of a few years ago, which was so fatally defective that I think that was the cause of the demise of the Literary Digest?

Mr. Bromley has cited you in his brief on some occasions, and he has cited you, on page 12, the case of *People vs. Viking Press*. The first paragraph of that quotation

I

*Argument by Mr. O'Brien.*

5488 ends with the citation of *People vs. Muller*, and the next sentence—and I lay stress on this:

"The statute is aimed at pornography, and a pornographic book must be taken to be one where all other incidents and qualities are mere accessories to the primary purpose of stimulating immoral thought."

I charge that this is the character of *Esquire*.

Gentlemen, I am not going to undertake to attack the witnesses for *Esquire*. You have seen all but those who are stipulated, who did not come here. You heard them cross-examined by Mr. Hassell. I think you are in a fair position to evaluate their testimony.

5489 I am not inclined to nor will I impugn their motives or their truthfulness. That will have to be done by the record if at all.

I don't want to indulge in any mud-slinging although I think there have been many mistakes in judgment on the part of those people. I think those people have presumed to testify about something they did not quite grasp.

Indeed, I have in mind some of the persons who were stipulated. Two or three fine ladies whose characters are beyond reproach, I am sure, who are heads of women's colleges. They are all unmarried, according to their description.

5490 Do you think, gentlemen, that these unmarried ladies, presumably innocent of any idea of any understanding of pornography or what goes on in men's minds with relation to sex, are in a position to tell you anything that you do not know already about *Esquire*? I don't think so.

But those witnesses are offered of course on the same basis as the men and all the other witnesses.

There was another poll mentioned here, two or three of them. Now, it appears to me that this poll wherein people

*Argument by Mr. O'Brien:*

are questioned around the country can be defective, and I think just as defective as the Literary Digest poll was.

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The interpretation of the answers, as far as I know about it from statements of counsel, could be quite misleading. In other words, if they ask you, "Do you object to Esquire or would you object to having it in the home?" I might say, "No." I might say, "I don't know," unless I said, "My wife wouldn't like it" or "My children wouldn't like it." No doubt that would be a vote in the favorable column.

Now take the other poll, the one where they assumed the different quantities of material in there. The classification of material in those columns are not such that you can apply them to the problem before you. They did not take any poll or make any examination to determine, for example, in their investigation whether the competing magazines or the other magazines compared set up their text or their cartoons in the same way as Esquire. A picture was a picture and an advertisement was an advertisement and a column or a page of text was editorial matter in their opinion or something else.

5492

Statistics do not prove a great deal except that someone spent a great deal of time figuring something out, and I feel that the statistics that you have here, even if I could accept them, are meaningless.

Now, with respect to the question of whether or not this publication was originated for the purpose of complying with the statutes. Now, some attempt was made to belittle Dr. Moore's test of obscenity, but we find as a matter of fact that the test of obscenity, which he applied, as I said, is still that of the Supreme Court.

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We find here a man who was given a job to make up his own mind, as to whether he thinks this magazine is obscene or not, going to the libraries and informing himself as to

*Argument by Mr. O'Brien.*

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what are the tests and standards of obscenity. He didn't think he already knew them; he did not presume, like the witnesses I have heard on the other side, that they could make up their own test without reference to any authority.

He went painstakingly and looked at the material so that he might be informed and might form a fair and reasonable judgment about the contents of *Esquire* before he looked it over, and it is not fair, gentlemen, to say that he did not examine everything. It is not fair to say that because he did not mention some things that he approved it, for he told you very candidly that his notes did not contain all the material he found in there but merely samples of them.

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Now, Mr. Croteau, who was a witness for the defense. Mr. Croteau has been held up to you as a rock of testimony which cannot be gainsaid. You can't get around the fact that he is from the Watch and Ward Society. You can't get away from the fact that he devotes his life to reading magazines or books or periodicals for the purpose of determining whether they are obscene or not. We do not.

We can't get away from the fact that he goes to, I don't know how many, four, five, or six burlesque shows or stage presentations every week, to determine whether or not they are obscene. We do not.

5496

I want to tell you what was said to me about Mr. Croteau by someone who was listening to his testimony, and I think it is the most apt criticism I have heard: "Mr. Croteau is so numb mentally and morally from looking at these things that he doesn't even recognize it in a magazine when he sees it."

We heard a great deal about advertising and the investigation that was made with respect to the pictures contained in advertisements, how decent or indecent they might be.

*Argument by Mr. O'Brien.*

Now, gentlemen, there is something about advertising which should be taken into consideration in that connection. The very organization who had a witness here, the Curtis Publishing Company, published a book on advertising. I have read it many years ago. It was an excellent text. It has been reprinted and the same doctrine has been set forth in *Printers Ink* and many other publications. There is something about illustrations in advertising which this witness did not bring out:

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An advertisement has an illustration or a line in it and the one primary purpose of it is to draw your eye to that advertisement. When your eye is drawn to the advertisement, the advertisement has to have a second powerful quality in order to be a good one. Your eye must be drawn away from it to the item being advertised.

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Now, I will agree that if they are advertising women for sale, with pictures of women such as we find in *Esquire*, that would be good advertising, but if they are advertising ordinary merchandise the pictures must be of a subsidiary character. It must be subsidiary to the prominence of the thing to which the reader's attention is being drawn, so the standards of pictures in advertising have nothing to do with the standards of pictures and cartoons because the reader or the observer of a cartoon is drawn to what? To the cartoon and nothing else but the women in the cartoon, and not some other thing on which his attention is later to be concentrated.

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What parallel is there there? None.

I think, gentlemen, I have said all I have to say except I want to repeat again and I want to leave with you this thought about the case, and I am dealing almost exclusively with this phase: that Congress jealously guards second-class mailing privileges; that it intends and requires that it

*Argument by Mr. O'Brien.*

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shall only be extended to a publication which must fully qualify in order to enjoy it.

And we have no leeway in granting it where it is not definitely, inescapably earned or where the qualification is not fully met.

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That Esquire, whether we think that everything we pointed out is actually indecent or obscene, does not meet the requirements of Congress as set forth in the second-class statute because the publication, as I have said again, and will say now once more, is not and was not originated and published for the dissemination of information of a public character; that it is not at all devoted to literature, the arts, the sciences, or some special industry; and therefore in my opinion it is not entitled to enjoy the second-class mailing privileges.

Mr. Bromley: May it please the Chairman, I cannot let pass unnoticed the constant reference to the question of subsidy.

Subsidy has no place in this case whatsoever.

No one in this Department knows whether the second-class mailing privilege costs the Government money or whether it does not.

5502

No one knows whether the abolition of the second-class would raise or lower the revenues; and finally, under the statute, which does not confer a privilege but which accords privileges and rights, if we comply with the conditions we are entitled to the second-class privileges, and the question of what it costs the Government, whether it costs the Government anything, is entirely beyond the scope of inquiry in this case.

Chairman Myers: Do counsel on either side desire to submit anything by way of briefs in addition to the arguments just now made?



*Colloquy.*

Mr. Bromley: Has the Board any desire in the matter;  
Mr. Chairman?

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Chairman Myers: No, it is immaterial to us. We have your brief filed originally and I take it that Mr. Hassell and Mr. O'Brien will present the briefs which they now have at hand and which you have seen, have you not?

Mr. Bromley: The Appendix A I have seen.

Chairman Myers: Yes, and if you desire to let it go at that, that is satisfactory to us. It would mean a saving of time, but it is entirely as you counsel on either side or both sides may wish.

Mr. Bromley: We are satisfied.

Mr. Hassell: Government counsel do not desire to submit any other brief. If the Board wants to peruse the document that I got up for use in the application cases that have been considered by your somewhat singular Board, I have no objection to it.

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Chairman Myers: I think I have a copy in some other case but I would like to have one in this case, however. I would like to have copies of the briefs of both sides, myself.

Mr. Cargill: I would like a copy very much.

Chairman Myers: If you would be good enough to furnish us with one.

Mr. Hassell: I will.

Chairman Myers: That brings the trial to a close.

5505

Mr. Cargill: I would like to take this opportunity to say here that both counsel for the Government and counsel for the respondent in this case have demonstrated their sincerity, and regardless of the outcome or the decision of this Board you have my thanks for the way in which this hearing has been conducted.

(Whereupon, at 12:15 o'clock p. m., the hearing was closed.)

1836

**Report and Recommendation of Hearing Board.**

5506

**BEFORE THE  
POST OFFICE DEPARTMENT**

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**IN THE MATTER**

**OF THE**

**SECOND-CLASS MAILING PRIVILEGES**

**OF**

**THE MAGAZINE, ESQUIRE, PUBLISHED BY ESQUIRE, INC.**

5507

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**MEMORANDUM TO THE THIRD ASSISTANT  
POSTMASTER GENERAL**

**November 11, 1943.**

5508

This proceeding is on a citation to show cause why the second-class entry of mail matter for the magazine Esquire should not be suspended, annulled or revoked on the grounds (a) that it is non-mailable because of having published and contained obscene, lewd and lascivious matter together with matter of a similar or related nature, (b) that it is not originated and published for the dissemination of information of a public character or devoted to literature, the sciences, arts or some special industry and having a legitimate list of subscribers and (c) that it is not a mailable periodical of the second class of mail matter, as it, in a generally uniform and systematic manner publishes non-mailable matter. An exhibit cites fractional parts of each issue of the magazine from January to November of 1943 inclusive as coming within the scope of the charges.

To this citation the respondent, Esquire Inc., filed an answer denying the charges and setting up affirmative defenses, thus raising questions of both fact and law.

*Report and Recommendation of Hearing Board.*

On these issues evidence was introduced.

The Post Office Department put in proof eleven copies of Esquire, January to November 1943 inclusive, containing the matter complained of. These issues had a total of approximately 1972 pages of reading and advertising matter of which about 86 pages were cited as coming within the charges set forth in the notice to show cause. They constitute 90 separate items of complaint. Of these 90 items 60 were approved as not being obscene by some one or more of the Post Office Department's own witnesses. About 1886 pages of these exhibits were not condemned by the Department and both counsel for the Department and some of its witnesses stated that parts thereof were not objectionable, although most the Department's witnesses had not read the matter which had not been referred to in the citation. In fact most of them had not read all of the matter objected to.

The Post Office Department presented nine witnesses, most of whom spoke for their separate personal views and did not attempt to testify as to the mores of the present day.

On its part the respondent presented thirty-eight witnesses to testify in person or by stipulation. These witnesses were distinguished psychiatrists, authors, educators, publicists, advertising business men, advertising agents, art specialists, samplers of public opinion and the like. It was the opinion of all these witnesses that none of the matter complained of was obscene, although in certain instances some of them frankly admitted that specific matter called to their attention was indelicate, vulgar and in bad taste. These opinions were reiterated and clinched on cross examination. A number of these witnesses testified that Esquire disseminated information of a public character and that

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*Report and Recommendation of Hearing Board.*

5512 it is devoted to literature, science, the arts and special industries. It was conceded on both sides that it had a legitimate list of subscribers.

5513 Polls, after the method of the Gallup poll, had been taken by the Curtis Publishing Company of Philadelphia and Crossley, Inc. of Princeton, New Jersey as to the Varga girl drawings. The manner of taking these polls and the results were put in evidence in great detail and showed that about 80%, as reported by the Curtis Publishing Company and 77% as reported by Crossley, Inc., of the people of the United States thought that the Varga girl drawings were not obscene and that approximately the same percentage were willing to have it come to their homes.

Respondent's witnesses further testified as to the standards of the mores of our time and that the magazine did not violate these standards. In addition a large number of copies of various publications were introduced to show that publications of a similar character are publishing matter similar in content to that published by Esquire and that such publication is general and not a matter of isolated instances.

5514 It was further testified that the armed forces of our country had purchased, through several departments of our government, several hundred thousand copies of Esquire in specially prepared editions for distribution among our contingents overseas.

There is attached hereto Appendix A covering the specific charges in the citation.

In view of the foregoing, the following majority of the Board finds as follows:

- (1) The charge of obscenity in the original and amended citations has not been supported and proved in fact or in law.

*Report and Recommendation of Hearing Board.*

- (2) The publication has not failed to comply with the 4th condition of section 226 Title 39 of the U. S. Code as to its second class mailing entry. 5515

A separate report from the minority member is attached herewith as Appendix B.

**RECOMMENDATION**

It is, therefore, respectfully recommended that the proceeding herein be dismissed and that the second class entry of the magazine Esquire be continued in full force and effect.

5516

(Signed) WALTER MYERS  
Chairman.

(Signed) F. H. ELLIS  
Members of the Board.

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*Appendix A Annexed to Report and Recommendation  
of Hearing Board.*

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## APPENDIX A

It is believed that the board should comment directly on the cited matter in the eleven issues in question.

As to the Varga calendar by months in the January issue and the subsequent open gate Varga pictures in the succeeding issues, it is not believed that the pictures are obscene.

## JANUARY ISSUE:

5519

Page 6—"Shor Nuff!"—This is a reproduction on the editorial page of a communication from a reader commenting on a story which appeared in a previous issue. While some of the reference in this letter might be suggestive, in the setting which criticizes a previously published article, it is not believed to be obscene.

5520

Page 45—Verse—"Benedicts, Awake". While unquestionably there are some sex connotation to be derived from the poem, several witnesses testified that it was a very excellent poem and at least one Government witness found no objection to it. It is not believed that it would come within the category of obscene matter.

Pages 83 to 119—Article "Those Star and Garter Blues". This is a review of a current Broadway play and while the language in some places appears coarse and perhaps indelicate, it is not believed to be obscene in the light of current reporting of an existing play.

Page 123—"Dear Dr. Diddle"—The main objection appeared to be from the questioning by Government attorneys as to the term "Dear Doctor Diddle". While to some minds diddle has a special connotation, it does not necessarily fol-



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low that such connotation is mandatory and we do not believe the article obscene.

552f

Page 137—Cartoon "And to think I gave up drawing". The board can see nothing obscene about this cartoon.

**FEBRUARY ISSUE:**

Page 65—Cartoon "What am I bid for this 100 lbs. of sugar?" Great stress was laid on the fact that the girl being sold looked like an American and suggested selling of girls for immoral purposes. Such deductions, of course, could be made, however, the cartoon is a funny take-off on the current shortage of sugar and depicts the selling customs in a country other than America. It is not believed to be obscene.

5522

Page 77—Cartoon at bottom of page and accompanying text. This is a picture in "Home Sweet Ruby Street", particular objection being made to the cartoon at the bottom of the page. While the cartoon, and perhaps the story is not in good taste, nevertheless it does depict a certain strata of the social life of the community described and is not considered obscene.

Page 95—Story "The Unsinkable Sailor". This is a story of a Merchant Marine, written in rough indelicate language that would be considered decidedly bad taste. However, it is not believed that the article within itself would be termed obscene.

5523

**MARCH ISSUE:**

Page 9—Advertisement of "Thorne Smith's 3 Wittiest, Most Ribald Novels" and illustration. While the advertisement generally is suggestive, it is not believed to be obscene.

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5524

Page 10—"On Putting Esqy in A Cap & Gown". This letter comes under the heading of "The Sound and the Fury" which publishes letters from Esquire readers. We do not believe there is anything in the letter to be objected to.

Page 49—Cartoon "I wonder how the Sultan knew this was my birthday?" This is another Sultan cartoon and in its setting it is not believed to be obscene.

5525

Page 68—"The Fall of the Flattering Word". Abstracts from the story of The Fall of the Flattering Word is objected to—one, that clothes do enhance the sexual attractiveness of women, and the other—the reference to the term "fly front". The board could find no point of obscenity in the article.

Page 107—Cartoon "Seems like somebody's allers clamoring to somebody to open up a second front, don't it?". This is one of a series of hill-billy cartoons and the board can see nothing obscene about it.

**APRIL ISSUE:**

5526

Front cover—Breasts of female figures overemphasized. The board can find nothing obscene in this.

Page 60—Article—"The Court of Lost Ladies—Despite her Honor's years of earnest striving the ranks of the sisterhood had never diminished, never changed". This is an article written on the happenings of a New York night court. The language is coarse and entirely too descriptive concerning the lives of prostitutes. However, it is more or less factual and in the setting, it is not considered to be obscene.

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**MAY ISSUE:**

5427

Page 32—Article "The Savage Beast in Us—Dispelling the hopes of burlesque entrepreneurs and fears of censors that the strip has sensory appeal". This is an article debunking burlesque. While some of the description, as well as the illustrations, indicate coarseness and indelicacies and might be termed in bad taste, nevertheless, in the setting presented is not believed to be obscene.

Page 48—Cartoon "She looks more like a B-17 than a P-40". While the imagination might derive some sexual connotations from the cartoon, it is not believed that there is anything obscene in it. 5428

Pages 86 and 87—Pictures 29 to 32 and text. These are a lot of silly pictures with a similar type of text. While the pictures and the text may be somewhat suggestive and in bad taste, it is not believed they are obscene.

Page 93—"Broadway for The Boys". This is another review of a current play in New York. The most objection offered was to the picture from the play on Page 92 and the caption to the picture on Page 93. The language is that used in the play, it is very coarse and in bad taste. However, in the setting of a critic's review, we do not believe the picture or the caption is obscene. 5429

**JUNE ISSUE:**

Page 134—"Libel suits were as wine to that hell-firin' editor, etc." This is an article quoting from an old time Editor from the West. The epitaph is decidedly vulgar and in bad taste, as is the article on the whole. It is depicting

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5530

a certain type of being, and in the setting of more or less factual reporting, is not considered to be obscene. However, this is probably one of the two most objectionable articles in the eleven issues.

**JULY ISSUE:**

Page 10—Article from a reader from Paradise, Pennsylvania, in the "Sound and the Fury." There is nothing obscene contained herein and it is probably cited merely to give some reader's views.

5531

Page 76—Picture "Broadway for the Boys". This is a picture from a musical comedy and it is not considered in any way obscene.

Page 87—Pictures 55 and 56 and text. While the text may have some sexual connotations, considering the setting it is not believed there is anything obscene contained therein.

Page 141—"Dog's Worst Friend". This is an article in decidedly bad taste, but it is not believed to be obscene.

5532

Page 146—Pictures, especially center one, in advertisement "Esky buy-products". While probably offensive to some, it is not believed that the pictures within themselves are obscene from the standpoint of stimulating any sexual desires.

Page 148—Cartoon showing perfume counter. While certain deductions might be made in connecting the two display signs, and might be interpreted as bad taste, it is not believed there is anything obscene contained therein especially when you consider it is in the nature of a cartoon.

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**AUGUST ISSUE:**

5533

Page 10—"Considered Opinion"—Another letter from a reader. This again merely quoting a letter that refers to the May Issue article entitled "Broadway for the Boys" and is not considered obscene.

Page 10—"Prayer for a Paper Shortage". This is nothing more than a silly letter from a reader and is not considered obscene.

Page 30—"Many Wives Too Many". This is a comical take-off on a legitimate book written advocating plural marriages in England. Some of the language might be considered as indelicate or bad taste but in the setting it is not believed to be obscene.

5534

Page 73—Picture. "Mood for Red Hair". On the testimony it is evident that this is a most excellent piece of photography and we do not see where there is anything obscene about it.

Page 89—Picture "Paste Your Face Here". This in the opinion of the Board is the most objectionable item in the entire eleven issues. It is believed that to the average reader the intent derived therefrom would be a nasty take-off on an act of sex perversion. However the Editor has used some care to present the matter in a way that probably would prevent a conviction under the criminal statutes. To the left of the article it is shown that the reader need only paste his own likeness in the indicated blank space". (Quotation marks supplied.) Further, this is one of a series of three pictures, the first one appearing in the July Issue on page 81 and the other one appearing in the September Issue

5535

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5536

on page 73. Of course the July and September Issues are perfectly innocent pictures in every way. The Board does consider that this picture has definite obscene connotations. While the Board believes this to be a most disgusting picture it is not believed that it furnishes sufficient grounds within itself to rescind the second-class privilege to the Publisher when you consider the matter of the entire eleven issues as a whole. The Board does consider, however, that perhaps this one picture is a matter that should be submitted to the United States Attorney for his opinion as to prosecution, although as stated above the Editor has protected himself both by the text and the issue of the series of three such pictures.

5537

Page 90—Cartoon "She came directly from the wedding". This cartoon seems silly to the Board and we certainly do not think it obscene.

Page 105—Cartoon "Thank God—help at last". While sex connotations might be derived from a study of the cartoon, in the setting we do not believe it to be obscene.

5538

Page 110—Cartoon, "That's Miss Blimpton". The Board does not find anything obscene in this picture.

Page 127—Cartoon "Hew to the line, Bertha". This is rather a silly take-off on the present shortage of hosiery. However, it is not considered obscene. Testimony called attention to the Editor's note at the bottom of the page, wherein it was stated that Esquire will accept no responsibility for what may happen if male readers fail to tear off the bottom of this page before letting the female dependents see it. This is an example as to how far the mind of



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a particular individual may travel when looking for dirt. The Counsel for the Respondent invited attention to a similar Editor's note following all of these style pictures showing in a joking manner that the man might have to spend some money if the female members of the family knew where they could obtain information on these latest fashions.

5539

Page 144—"Offensive on the Home Front". The language used herein is somewhat indelicate and probably in bad taste, but it is not considered to be obscene.

**SEPTEMBER ISSUE:**

5540

Page 10—"Conservative Suggestions". This is another silly letter from a reader in the "Sound and Fury" page. It is merely cited to show the reader's reaction to the Varga girls and is not obscene.

Page 43—Cartoon "Sold American". This is another cartoon on the customs of selling women in other countries and in the setting it is not considered obscene.

Page 65—Cartoon "Come back later". This is a take-off on the old milkman joke and while indecent connotations may be taken by the reader, it is not believed in the setting of the cartoon that it is obscene.

5541

Page 66—Cartoon "It's the only time daughter and her young man have for courting". This is a take-off on present day war workers and it is not considered to be obscene.

Page 84—Cartoon "Every night he tells her he's sailing tomorrow". This is a take-off on present day conditions and it will be noted that in this cartoon as in the previous

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5542

cartoon it is apparent that the mother of the girl is present. It is not believed there is anything obscene.

Page 86—"Goldbricking with Esquire"—"A sergeant was home on emergency furlough etc." Goldbricking with Esquire is a reproduction of alleged jokes and sayings from army newspapers. On to each item is cited the paper from which it was reprinted. In the setting the Board cannot see anything obscene in the material cited.

5543

Page 87—"She: 'Would you like to see where I was operated on for appendicitis?' 'He: 'No—I hate hospitals.'" The same comment is applicable as to the matter cited directly above on Page 86.

Page 102—Cartoon "Ain't it a damn shame?" No doubt the average reader would get some kind of a sex connotation from this kind of cartoon, however, in the setting it is not believed to be obscene.

**OCTOBER ISSUE:**

5544

Page 10—"The Case of the Classy Chassis." This is another letter published in the "Sound and Fury", from the readers and is not considered obscene.

Page 37—Cartoon. The Board can find nothing obscene in this.

Page 38—Article "Wise Men Pick 'Pyknic' Girls." This is a take-off on scientific articles depicting the Pyknic and the Leptosome type of girls. It is not believed that the article is obscene in any way.

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Page 49—Cartoon. This is a take-off on the fuel situation and while it might be considered in bad taste, it is not considered obscene. 5545

Pages 56 and 128—"Portrait Above the Fireplace". This is a very excellent story and is not believed to be obscene in any way.

Page 93—"Goldbricking With Esquire"—Items 2, 3, and 17. These are jokes published from Army papers, and in the setting it is not believed that there is anything obscene contained therein. 5546

Pages 104 and 105—Story "The Sporting Scene". Some people might consider that the story has some indecent connotations, that some of the language is vulgar—however we do not believe that there is anything obscene in it.

## NOVEMBER ISSUE:

Page 52—Cartoon "Such a neighbor—always borrowing." This is another Sultan cartoon, which is a take-off on neighborly borrowing and we do not see anything obscene in it.

Page 60—Pictures and description of Folies Bergere girls. We do not believe that there is anything obscene to this. 5547

Page 66—Cartoon "It's no use, Sarg." We can see nothing obscene in this.

Page 67—Cartoon "At the U.S.O. in New York they just gave us cigarettes!" We do not see anything obscene in this.

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5548

Page 73—Picture "Golden Mould." Testimony showed that this was a very high class piece of photography and we do not find anything objectionable about the picture.

Page 77—Article, paragraphs numbered 1, 10, 15 and 21. This is an article criticizing plays which contain suggestive settings and improper language. It is true that in writing the article the writer has used the exact wording, and scenes he objects to. The language generally might be considered indelicate and decidedly bad taste. It is not considered, in its setting, to be obscene.

5549

Page 83—Cartoon "My date's at the awkward stage—all hands and no dough." This is a silly cartoon and of course one can imagine anything being intended, but it is not believed to be obscene.

Page 89—Picture. This is a back stage scene from the circus and in its setting, we do not believe that it is obscene.

5550

Pages 94 and 95—"Goldbricking With Esquire". Items 4, 15, 24, 27, 28, 30, 31, 35 and 36. Again we must consider that these are alleged jokes from camp magazines, reproduced giving credit to the different publications. The following is comment by items:

Item 4 is probably in bad taste, but considering the setting, it is not believed obscene; Item 15, While obscenity may be in the background, it is in no way apparent in the way the joke is told; Item 24, We do not find anything obscene about this; Item 27, This is an indecent suggestion of exposure, however, considering the setting, we do not believe that it could be classed as obscene; Item 28, While it might be considered suggestive, it is not believed that it is obscene.

*Appendix B Answered to Report and Recommendation  
of Hearing Board.*

5551

in the setting: Item 30. This is an old take-off on the young brother and sister and we do not see anything objectionable in it: Item 31. While this may be suggestive in the setting, it cannot be considered obscene: Item 35. Cartoon. This might be considered by some as indelicate but certainly not obscene. Incidentally the Sunday Star recently contained the identical cartoon, in reverse, in the Sunday funny papers and Item 36. Indelicate perhaps, but not considered in its setting as obscene.

APPENDIX B

5552

November 12, 1943.

Memo to the Third Assistant Postmaster General:

This report is to advise you of my conclusion after looking at exhibits, listening to testimony and argument as to why the second-class mailing privilege should or should not be withdrawn from Esquire, Inc., for its monthly publication "Esquire".

The exhibits and transcripts of testimony are here for your perusal and I will only attempt to point out to you the basis for my conclusion by reference thereto and my own comments.

I am not satisfied to exonerate the magazine and give it unqualified approval for the reason that its past history, the eleven issues under consideration, and the particular items complained of either overstep or are of the borderline variety between the decent and the indecent. It is not contended that all matter contained in these issues is borderline, but it is my conviction the dominant factor of the magazine, and upon which it relies to secure its readers, is

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of Hearing Board.*

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its pictorial and other matter that relates in one form or another to so-called jokes, gags and cartoons with double meanings that bear on sex. The feature is in every issue. It is my opinion the publishers are only restricted in their presentations by the fear of the loss of the second-class privilege or conviction in the courts. Were this not true, they would never have voluntarily submitted to that which amounts to censorship, 18 issues of their magazine, and willingly made changes as suggested by the Solicitor for the Post Office Department. No doubt such practice would have been continued by them had not the Post Office Department become burdened and refused to be continually annoyed. Could it be argued that such voluntary action would be taken by any reputable magazine whose policy was one that stood for decency. I think not.

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There can be little doubt that the feature complained of here is its constant presentation of that which borders on and some times oversteps the bounds of decency. Its so-called jokes, gags, drawings, pictures of thinly clad women, and cartoons all have a sexual tinge. Since being placed on its own responsibility, the same general type of matter has been distributed. With this in mind, and I do not see how we can escape it, attention is directed to page 89 of the August 1943 issue. The presentation made on this page, in my opinion, is obscene. During the course of the hearings, it was carefully pointed out by the respondent that this picture was one of a series of three appearing one each in the July, August and September issues. The respondent would have us believe the picture is so innocent that it was intended only for a little fun so that service men could attach their photograph in the space indicated and send the picture to their parents, etc. To accept such an explanation would be a shock to sound reasoning, yet so

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called experts for the respondent stated under oath that they could see nothing obscene in this picture or the wording thereon. My opinion is they disregarded their oath and as I understand some of these witnesses received as much as \$500.00 a day for the testimony given. I can only view it in the light of testimony bought and paid for and that it was not without prejudice, for it is almost inconceivable that an expert, skilled and practiced in delving into the innermost secrets and thoughts of both normal and abnormal human beings, could be so simple as to fail to detect the degrading and obscene implications. Neither do I believe the editor, when he exhibited and pointed out the series of three pictures, two of which are innocuous, when he claimed the picture was an innocent one. The editor, Mr. Gingrich, is clever and skilled in the selection of pictures, cartoons and writings which have double meanings. It is my opinion that in the selection of this series of pictures, he was fully aware of the implications thereof and planted the innocuous pictures as a smoke screen for himself when he deliberately included this obscenity. 5557

In my opinion the publication Esquire presses to change the standard of acceptance against the barrier between decency and indecency. If this publication is allowed to use such pictures as contained in the August issue without challenge, it will then become an accustomed practice and will be aped by other borderline publications who look to Esquire as the pace setter. 5558

The fact may be stated that the complained of matter is only a minor part of the many so-called features of this magazine and that the obscenity simmers down to one page in one issue. Granted for argument's sake, however, regardless of that, it is still obscenity to me and one page in a magazine which is part and parcel of that magazine makes 5559

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5560

the entire magazine unavailable. I think the August issue should be declared unavailable.

I am also of the opinion this issue of the magazine (August 1943) should be submitted to the United States Attorney for possible prosecution.

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From testimony presented, the respondent would have us believe the presentation of the pictures of the "Varga" girl is an attempt to glorify the American woman. I do not believe it. Admittedly, the pictures are not claimed to be art although skillfully executed. They are made a feature of this magazine because it has been found saleable and profitable and the corporation has capitalized on the advertising thus afforded to the extent that millions of similar pictures are being distributed on calendars, playing cards, etc. In themselves, I do not believe they are obscene. However they, like the general tone of the features complained of, keep sex before the reader.

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The question that has troubled me during this hearing is whether the Congress in passing this legislation intended to extend to publishers the benefits of rates at less than cost of handling for the dissemination of matter of doubtful value to the public. The matter complained of, in my opinion, certainly has no educational value and is not calculated for the good of the general public. It is true 700,000 copies are claimed to be sold each month. I doubt that if the general public, who are not subscribers, would stand for this so-called subsidy if it was put to them in the light that part of their tax money was being given to the owners and stockholders of Esquire to the extent of a half-million dollars a year. I do believe the taxpayers would demand that such matter be excluded from preferential rates and that it be required to pay its own way.

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So far as I know there has been no instance of a court test that would define the authority of the Postmaster General in exercising his administrative judgment as to what constitutes "mailable matter of a public character" or etc."

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The statute under which we are laboring has been a debatable one since its passage and I have given serious thought to a proposed further provision to amend the present law that would more clearly define the intent of Congress in order to relieve this troublesome condition, but must confess that I have sought in vain for words that would not have a like indefiniteness.

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If the suggestion of this member of the board is accepted and the August 1943 issue of Esquire is declared unmailable on the grounds of obscenity, the second class privilege may be withdrawn in good faith inasmuch as it has failed to issue at stated intervals a mailable issue. I recommend this action be taken. Such action will, without doubt, throw the whole matter into court, and if, as a result, the findings are against the Post Office Department, there will be good reason to present the whole matter to Congress for an expression of their views in the form of legislation.

I realize that the revocation would result in wide publicity and would no doubt bring criticism from the press which is supersensitive to anything that can be twisted into something that has even the appearance of restrictions on the freedom of the press. However, I believe the suggested action is justified in view of the fact the Congress at the time of passing the legislation under which we are now operating did not have before it at that time the type of matter complained of herein.

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(Signed) TOM C. CARGILL

Member of the Board.

# ORDER OF THE POSTMASTER GENERAL REVOKING SECOND CLASS PRIVILEGES

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December 30, 1943.

## ORDER NO. 23459

This is a proceeding under the Act of March 3, 1901 relating to the second-class mailing privileges accorded to the publication "Esquire" which was instituted by an order served upon "Esquire" and its publisher by registered mail on September 12, 1943 to show cause on September 28, 1943 why the second-class mailing privileges enjoyed by "Esquire" should not be suspended, annulled or revoked upon the following grounds:

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"(a) That it is nonmailable within the meaning of 35 Stat. 1129 (18 U. S. C. 334), in that issues dated January, February, March, April, May, June, July, August, and September, 1943, have contained matters described and portrayed as set forth in Exhibit A attached hereto of an obscene, lewd and lascivious character; and other matter of a similar or related nature:

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"(b) That because of the inclusion of such matter in the publication it has not fulfilled the qualifications of second-class mailing privileges established by the Fourth condition of 20 Stat. 359 (39 U. S. C. sec. 226):

"(c) That it is not a mailable newspaper or other mailable periodical publication of the second class of mailable matter as it, in a generally uniform and systematic manner, publishes nonmailable matter in that in issues dated January, February, March, April, May, June, July, August, and September, 1943, it has included matter such as is cited in Paragraph (a) hereof."

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An exhibit containing the matter printed in various issues of "Esquire" held to be in violation of the postal statutes accompanied the communication to the publisher.

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At the request of counsel for the publication, postponements of the hearing were granted, first to October 12 and later to October 19 on which day the hearing began before a Board of three hearing officers. Testimony was given and exhibits were introduced, both in behalf of the respondent and the Solicitor of the Post Office Department. The hearing continued through November 6.

The hearing officers submitted to the Postmaster General their respective recommendations on November 11, 1943, together with the transcript of the proceeding, which included the testimony, the statements and arguments of the parties, and the exhibits and briefs.

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In view of this voluminous record, at the onset it may be well to clarify and state just what is the issue in this proceeding. This is a proceeding involving the use of the second-class mailing privileges. Consequently, there is not involved the question of nonmailability as first, third or fourth-class mail matter nor of the right of freedom of speech, or of the freedom of the press. Nor are we here concerned with the question of whether a criminal prosecution against the publishers might or might not be sustained by the same or similar evidence.

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Proceedings to suspend, annul, or revoke second-class mailing privileges are not criminal proceedings. The questions in issue are not the acts of the owner, publisher or editor. The single issue is the character of the publication, and whether that publication meets the conditions set out by the Congress in respect of its use of the second-class mailing privileges.

This proceeding presents but two questions for consideration:

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5572

(1) Does the publication fail to comply with the Fourth condition of the Act of March 3, 1879, section 14 (20 Stat. 359; 39 U. S. C. 226), and thus not being originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, is not entitled to second-class mailing privileges.

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(2) Is the publication non-mailable within the meaning of the Act of March 4, 1909, section 211 (35 Stat. 1129; 18 U. S. C. 334) and thus being a non-mailable publication is not entitled to second-class mailing privileges.

In arriving at a determination in this particular type of proceeding it is necessary that the Postmaster General recognize the nature, conditions and result of these unique second-class mail privileges because they have been established and are supported and maintained by the people of the United States.

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In nature they are true privileges, specifically called and referred to as such by the postal statutes, and stated by the Supreme Court to be " \* \* \* justified as part of the historic policy of encouraging by low postal rates the dissemination of current intelligence. It is a frank extension of special favors to publishers because of the special contribution to the public welfare which Congress believes is derived from the newspaper and other periodical press."<sup>1</sup>

Furthermore, to assure that a contribution of that precise character is in fact made, Congress has required that to enjoy these privileges and preferences the publication as a fourth condition "must be originated and published for

<sup>1</sup> *Milwaukee Pub. Co. v. Burleson*, 255 U. S. 407, 410.



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the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry \* \* \*

There are good reasons for this jealous regard by Congress of these extraordinary privileges. One fact not unimportant is that as a result of the second-class mail privileges the United States Postal Service is compelled to make up the difference between the postage paid by the publication and the cost to the United States Postal Service to distribute the publication through the mails. This in effect is an indirect subsidy at the hands of the Government. The holder of these privileges thus can use the United States mails to effect delivery of his product to his customers, with the assurance it will receive certain preferential handling and services which accrue to no other class of mail, by the payment of but a fraction of the cost of the service.

In other words, by this special favor granted him, the cost of delivery is paid in part by every single person mailing a letter and by every single person paying Federal taxes.

Examination of the record, briefs, and reports of the hearing officers indicates two diametrically opposed theories of the case as to the fourth condition. The theory of the publication appears to be that the requirement that a publication "must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry", is so general and "broad as to include everything and exclude nothing" if it be in fact a publication.

If this theory of the case is applied, it means that the Federal government, as a matter of national policy, intends to foster, subsidize, grant affirmative assistance and other

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5578

wise approve every kind of periodical publication irrespective of its contribution to the public welfare and the public good. Such a theory not only favors that particular class of mail users with a preferential postage rate and other privileges which no other user of the mail is permitted to have, but requires that the Federal government make up the difference between the amount of postage paid and the cost to the Postal Service to deliver it throughout the United States.

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The contrary theory advocated during the proceeding goes to the other extreme. This theory of the case contemplates the Fourth condition as a continuing requirement that a publication must serve a useful public purpose, educationally or otherwise; that a publication "originated and published for the dissemination of information of a public character" is synonymous with current newspapers and current news magazines; and that "literature, the sciences, arts," means "classic literature", the "finé arts" and the "useful arts".

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If this theory is applied, it means that a large number of publications and periodicals of the editorial, fiction and humorous classes, which even though educational, innocent, delightful and entertaining, would not be permitted to use the second-class mailing privileges because they are neither current newspapers nor are they substantially devoted to literature or art of a classical or high artistic quality.

The three hearing officers recognized and gave the Postmaster General the benefit of their careful considerations of these diametrically opposed theories of the case. But they did not reach a unanimity of conclusion as to interpretation or recommendation.

My attention has been called by arguments of counsel in the record and in the briefs to the decisions and language in many cases, and to the administrative practices and inter-

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pretations. I am unable to reconcile them. Neither in them can I find such consistency and uniformity in declaration of principles as to amount to consistent precedent. 5581

Over the years the decisions affecting the matters here in issue and their administration have been inconsistent. From language in court decisions having some analogy to the matters here in issue, opposite conclusions may be reached. From the interpretations and practices of the officials administering this statute over the years, opposite conclusions may be reached. Furthermore, the cases and the administrative interpretations are inconsistent. I am unable to find any case since the enactment of this statute where the courts have had this clear-cut issue before them, nor can I find a case which decides just what the statute means as to second-class mail privileges. 5582

I do not believe that a statute which so vitally, directly, and continually affects so many should remain longer in the realm of doubt or be subject to the vagaries of whatever Postmaster General may then be administering them.

In the first instance, it is for our courts to say what this statute means and what limits and restrictions there are upon the use of the second-class mail privileges. If our courts conclude that the Fourth condition is a series of words without meaning, and that under it the Postmaster General actually cannot and should not revoke or deny second-class mailing privileges to publications such as this, then it is for the Congress to unequivocally and clearly state what if any are the standards to which a publication must conform before Congress will permit it to be given the cheapest rate of postage and contribute government funds to pay its cost of distribution by mail. 5583

If, on the other hand, our courts determine that the Postmaster General has the power and duty to enforce the

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5584

plain and common-sense meaning of this statute, and as well, to correct now the long-standing inconsistency and lack of uniformity in administrative interpretation and practice in this type of case, then it is for the Congress in the light of such a decision to determine what restrictions and limitations in the public interest are proper to be placed upon such a power and duty.

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Whether the dicta and decisions in somewhat analogous cases, as well as administrative interpretation and practices over the years, have so eaten away at this statute as to effectively nullify it is a decision for our courts and not for the Postmaster General.

This is essentially a judicial matter of deep significance, and the Postmaster General should not be hesitant in exposing these conditions to the critical public eye. Nor should he be reluctant to determine the matter in such a way that all phases of it may be fully considered and decided by a court of competent jurisdiction where every right and interest of the publication, the government, and the public may be fully protected.

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In the absence of specific decision by our courts, and in view of the inconsistency in analogous cases and in administrative interpretations and practices, I am compelled to resort to the statutes themselves.

The language of the Act of Congress establishing the Fourth condition seems plain and specific. I am unable to distort the plain meaning of plain words.

The plain language of this statute does not assume that a publication must in fact be "obscene" within the intentment of the postal obscenity statutes before it can be found not to be "originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry".

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Writings and pictures may be indecent, vulgar, and risqué and still not be obscene in a technical sense. Such writings and pictures may be in that obscure and treacherous borderland zone where the average person hesitates to find them technically obscene, but still may see ample proof that they are morally improper and not for the public welfare and the public good. When such writings or pictures occur in isolated instances their dangerous tendencies and malignant qualities may be considered of lesser importance.

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When, however, they become a dominant and systematic feature they most certainly cannot be said to be for the public good, and a publication which uses them in that manner is not making the "special contribution to the public welfare" which Congress intended by the Fourth condition.

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A publication to enjoy these unique mail privileges and special preferences is bound to do more than refrain from disseminating material which is obscene or bordering on the obscene. It is under a positive duty to contribute to the public good and the public welfare.

The editor of this publication admits that from its origin "our humor and our articles and our fiction all stressed a man alone angle—you might call it a stag party type of treatment"<sup>3</sup> and testified "we called it the smoking room type of humor".<sup>4</sup> He stated that as a part of its editorial policy it runs "cartoons that do feature sex".<sup>5</sup> Its featured pictures are stated to be "frankly published for the entertainment they afford".<sup>6</sup> But when the polls of public opinion submitted by the publication are examined,

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3 Transcript of proceedings, page 1160.

4 Transcript of proceedings, page 1282.

5 Transcript of proceedings, page 1285.

6 Transcript of proceedings, page 38.

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it is found that these pictures were characterized as obscene or indecent by 19 to 22% of the persons interviewed, and that 20 to 26% of the persons polled would object to having them in their homes.<sup>7</sup>

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The result of the distribution of such a publication is not without significance. As the publication's editor testified, Esquire "attracted a good number of imitators. There were various magazines which had various other related titles to that of Esquire, but the imitation copied only the superficial aspects, the smoking-room type of humor, much much grosser than anything we had ever used ourselves. These imitators "would simply trade upon the superficial aspects of Esquire and emphasize what to us were the features that we least wanted to see become cheapened and common".<sup>9</sup> "I wouldn't say coarsened, but they cheapened almost the desirability and value of that kind of material by making it a commonplace, whereas we had thought of it as being a smart and an exclusive type of feature."<sup>10</sup>

Whatever the featured and dominant pictures, prose, verse and systematic innuendos of this publication may be, they surely are not "information of a public character" or "literature, the sciences, arts or some special industry."

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I am unable to conclude that this publication complies with the Fourth condition or that Congress did intend or now intends that this publication be entitled to enjoy the second-class mailing privileges. I cannot assume that Congress ever intended to endow this publication with an indirect subsidy and permit it to receive at the hands of the

<sup>7</sup> Respondent's exhibits 90 and 93.

<sup>8</sup> Transcript of proceedings, page 1163.

<sup>9</sup> Transcript of proceedings, page 1165.

<sup>10</sup> Transcript of proceedings, page 1285.



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government a preference in postal charges of approximately \$500,000 per annum.<sup>11</sup>

In order to provide the publication ample opportunity to appeal this order to a court of competent jurisdiction to fully review and settle this matter in which the publication, the Post Office Department, and the general public have such a direct and substantial interest, the order revoking the second-class privileges of the publication will not become effective for 60 days.

Accordingly, the second-class mailing privileges of the publication "Esquire" are hereby revoked, effective February 28, 1944.

(Signed) FRANK C. WALKER  
Postmaster General

**Stipulation as to Record.**

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IT IS HEREBY STIPULATED that the foregoing (three printed volumes, pages 1 to 1865, inclusive) is a true and correct transcript of the proceedings before the Post Office Department "In the Matter of the Second-Class Mailing Privileges of the magazine Esquire."

**CRAYATH, SWAINE & MOORE,**

By **WM. DWIGHT WHITNEY,**

**Attorneys for Plaintiff.**

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**FRANCIS M. SHEA,**

**Assistant Attorney General of  
the United States.**

**EDWARD M. CURRAN,**

**United States Attorney in and for  
the District of Columbia,**

**BENEDICT S. DEINARD,**

**Special Assistant  
to The Attorney General.**

**Attorneys for Defendant.**

**Dated, April 3, 1944.**

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